TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. ~~395.~~ 123

THE UNITED STATES, PLAINTIFFS IN ERROR,

vs.

DENNIS CORWIN AND JOHN CARDWELL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

FILED OCTOBER 14, 1885.

1 In the honorable United States circuit court for the 5th circuit and western district of Texas, holding sessions in the city of Austin, in said district, at its January term A. D. 1884.

Now comes the United States of America, by her attorney, Andrew J. Evans, and complains of one Edwin P. Phillips, who is a non-resident of the western district and State of Texas, and who is totally insolvent, and has been so for many years, and one Dennis Corwin, and one John Cardwell, each of whom is a resident citizen of the county of Travis and the State of Texas and western district of Texas, and subject to the jurisdiction of this court, and so complaining would most respectfully represent—

That on the 20th day of May, A. D. 1881, the said Edwin P. Phillips, with the plaintiff, did enter into an *an* agreement, called therein an "Articles of agreement," the most important conditions of which are substantially as follows:

"This agreement witnesseth, that the said Major Wm. B. Hughes, for and on behalf of the United States of America, and the said Ed. P. Phillips, for himself, his heirs and executors and administrators, have mutually agreed, and by these presents do mutually covenant and agree, to and with each other as follows, viz:

"ARTICLE I. That the said Ed. P. Phillips shall furnish or cause to be supplied and delivered to the quartermaster's department, U. S. Army, at the military station of San Antonio, Texas, such quantity as may be required, not exceeding in all one million (1,000,000) pounds, of good merchantable oats of the best quality, free from dirt or other foreign matter, to be delivered in good new burlap sacks, each sack to contain about one
2 hundred and twenty-eight pounds of oats, weight of the sacks to be deducted; the said oats to be furnished and delivered as may be required for the wants of the said station between the first day of July, 1881, and the thirteenth day of June, 1882, in such quantities and at such times as the receiving officer may require.

"ARTICLE VI. That for and in consideration of the faithful performance of the stipulations of this agreement, the party of the second part shall be paid at the office of the chief quartermaster's department of Texas, at San Antônia, Texas, as follows: The sum of forty-two cents per bushel of thirty-two pounds for each and every bushel delivered, inspected, and accepted under this contract between the 1st day of July, 1881, and the 31 day of Dec., 1881, and the sum of fifty-two (52) cents per bushel for each and every bushel delivered, inspected, and accepted under this contract between the 1st day of January, 1882, and the 30 day of June, 1882, of thirty-two pounds.

"ARTICLE VII. That in case of failure of the said party of the second part to comply with the stipulations of this contract, according to the true intent and meaning thereof, then the party of the first part shall have the power to supply the deficiency by purchase or otherwise, and have the contractor charged with the difference in the cost to the Government, subject to the approval of the department *of* commander."

Plaintiff further avers that she and the said Edwin P. Phillips, on the 20th day of May, A. D. 1881, did enter into a certain other agree-
3 ment called "Articles of agreement," the most important conditions of which are as follows substantially:

"This agreement witnesseth, that the said Major William B. Hughes, for and on behalf of the United States of America, and the said Edwin P. Phillips, for himself, his heirs, executors, and administrators, have mutually agreed, and by these presents do mutually covenant and agree, to and with each other as follows, viz:

"ARTICLE I. That the said Edwin P. Phillips shall furnish, or cause to be supplied and delivered, to the quartermaster's department, U. S. Army, at the military station of San Antonio, Texas, such quantity as may be required, not exceeding in all one million (1,000,000) pounds, of good merchantable corn, of the best quality, free from dirt or other foreign matter, to be delivered in good new gunny or America "A" seamless sacks, each sack to contain about one hundred and twenty-eight pounds of corn, weight of the sacks to be deducted; the said corn to be furnished and delivered as may be required for the wants of the said station between the first day of July, 1881, and the thirtieth day of June, 1882, in such quantities and at such times as the receiving officer may require.

"ARTICLE VI. That for and in consideration of *of* the faithful performance of the stipulations of this agreement the party of the second part shall be paid, at the office of the chief quartermaster's department of Texas, at San Antonio, Texas, as follows: The sum of fifty-nine and three fourths ($59\frac{3}{4}$) cents for each and every bushel of fifty-six pounds of corn delivered, inspected, and accepted under this contract.

"ARTICLE VII. That in case of failure of the said party of the
4 second part to comply with the stipulations of this contract according to the true intent and meaning thereof, then the party of the first part shall have the power to supply the deficiency by purchase or otherwise, and have the contractor charged with the difference in the cost to the Government, subject to the approval of the department commander."

Plaintiff avers that each one of the said aforesaid agreements are on file in the proper Department at Washington City, and cannot be produced on trial hereof, but a true certified copy thereof will be offered in evidence is this cause, as well the parts set out as the whole of said instruments.

Plaintiff further avers that on the 23rd day of May, 1881, the said Edwin P. Phillips, as a principal, and the said Dennis Corwin and the said John Cardwell, did make, execute, and deliver unto the plaintiff their joint and several penal bond in the sum of three thousand dollars, conditioned mainly as follows, in substance:

"Now, therefore, if the above bounden Ed. P. Phillips, his heirs, exectors, and administrators shall and will in all respects duly and fully observe and perform all and singular the covenants, conditions, and agreements in and by the said contract agreed and covenanted" (then and there meaning the said contract of May 20th, 1881, hereinbefore set up and out and in which the said Ed. P. Phillips bound himself to furnish one million pounds of oats), by him to be observed and performed, and according to the true intent and meaning of the said contract, * * * then the

above obligation shall be void and of no effect; otherwise, &c., &c.

5 And plaintiff further avers that on the 23d day of May, A. D. 1881, the said Edwin P. Phillips, as a principal, and Dennis Corwin and John Cardwell, as sureties, did make, execute, and deliver unto the plaintiff their certain joint and several bond penal in the sum of twenty-one hundred and fifty dollars, condition among other things as follows, in substance:

The conditions of this obligation is such that whereas the above bounden Ed. P. Phillips has, on the 20th day of May, one thousand eight hundred and eighty-one, entered into a contract with Major William B. Hughes, quartermaster U. S. Army, for furnishing, at San Antonio, Texas, 1,000,000 pounds of corn; now, therefore, if the above bounden Ed. P. Phillips, his heirs, executors, and administrators, shall and will in all repects duly and fully observe and perform all and singular the covenants, conditions, and agreements in and by the said contract agreed and covenanted by him to be observed and performed, and according to the true intent and meaning of the said contract, &c., &c., then the above obligation to be void, &c., &c.

Plaintiff avers that each of said bonds of May 20th, 1881, herein set out, are on file in the proper Department at Washington City, and a copy of each will be offered in evidence on trial hereof.

Plaintiff avers that in all things she kept and fulfilled all the conditions upon her imposed by each and both of the aforesaid articles of agreement of date the 20th day of May, 1881, but that said Ed. P. Phillips wholly

6 failed, refused, and neglected to carry out any one or all of his stipulations in said agreements, by delivering a pound of oats or a pound of corn thereunder, to the injury, damage, and wrong of plaintiff in the sum of $11,564.55.

Plaintiff avers that by the failure aforesaid of the said Edwin P. Phillips to carry out, in whole or in part, the stipulations of his said obligations to furnish 1,000,000 pounds of oats and 1,000,000 pounds of corn, a breach of the said bonds of the said Edwin P. Phillips, of May 23rd 1881, has occurred, and on action at law has resulted to her, in this wise, to wit: By the failure of the said Phillips aforesaid to furnish the oats agreed in said contract to be furnished, and the corn so agreed, the plaintiff was compelled to and did purchase under and in compliance with provision of Article VII of the said article of agreement of May 20th, 1881, 845,027 pounds of oats at the costs of 19,035.72, and 477,165 pounds of corn at the cost of $9,819.84, to supply her needs and wants at the said station of San Antonio, but plaintiff charges that had the said Edwin P. Phillips furnished, as he was bound to do under his contract of May 20th 1881, and bond of May 23rd, 1881, the said 845,027 pounds of oats at his contract prices, then she would have paid therefor the sum of $12,199, and had he likewise furnished, the 477,165 pounds of corn at the contract prices, then she would have paid therefor the sum of $5,091.00.

That the clear loss to plaintiff by the failure of the said Edwin P. Phillips to deliver the oats aforesaid is the sum of $6,835.88, and by failure to deliver the corn aforesaid is the sum of $4,728.67.

Plaintiff avers that she has lost by the breach of the said agreements on the part of the said Ed. Phillips, the first $6,835.88 and second

7 4,728.67, or total 15,564,55, and for said loss the defendants, the said Ed. Phillips and his sureties Dennis Corwin and John Card-

well, are fully liable on their bonds aforesaid, of date May 23rd 1881, hereinbefore set out.

Plaintiff aver that upon a full and complete adjustment of the accounts of the said Edwin P. Phillips, as contractor to supply oats and corn to the station of San Antonio, Texas, under his contracts of May 20th, 1881, and under his bonds of May 23rd, 1881, there is justly due her as a Treasury balance the sum of 11,564.55. Plaintiff avers that the said sum of $11,564.54 is justly due her from the said Ed. P. Phillips and his bondsmen and securities, and that the sum has been a long time due and payable, and has often been demanded, and payment refused and neglected, to her great injury, wrong, and damages; wherefore she sues, and says he will dismiss without prejudice or trial the said principal E. P. Phillips, because he is a non-resident of this judicial district and State, and because he is insolvent, and prays citation for the defendants Dennis Corwin and John Cardwell and for judgment for the said sum of $11,564.55, or so much thereof as they are bounds by their obligations to pay, and for interest on the same, and for all costs, &c., &c.

ANDREW J. EVANS,
U. S. Att'y.

(Endorsed in the following words, to wit:) No. 1821, law side. United States vs. Edwin P. Phillips, Dennis Corwin, John Cardwell, Plff's. Original petition. A. J. Evans, U. S. att'y. Filed November 17, '83. M. Hopkins, clerk. By Sam Hopkins, d'y clerk.

8 United States circuit court, western district of Texas.

The President of the United States to the marshal of the western district of Texas, greeting:

You are hereby commanded to summon Dennis Corwin, of Travis Co., Texas, if he be found in your district, to be and appear before the honorable the circuit court of the United States, at a court to be holden in and for the western district of Texas, at the city of Austin, on the first Tuesday of January next, to answer a petition filed in said court on the 17th day of November, 1883, in a certain suit, No. 1921, in which said suit the United States of America, and who sues under the style of The United States, is plaintiff, and Edwin P. Phillips and John Chenneville, who are resident citizens of the county of Travis, western district of Texas, and who are sued under the style of Edwin P. Phillps, Jno. Cardwell, and Dennis Corwin, are defendants; the nature of the demand set out in said petition being a suit for debt *for debt* for failure to carry out two certain contracts (called therein articles of agreement) to deliver to the Quartermaster's Department at the military post at San Antonio, not exceeding 1,000,000 pounds of good merchantable oats, and not exceeding 1,000,000 pounds of good merchantable corn. Plaintiff alleges that she was compelled to purchase for her own use 845,027 pounds of oats at a cost of $19,035.72, and 47,765 at a cost of $981,984, which plaintiff alleges she needed to supply her wants, to *to* plaintiff's damage in the sum of $11,564.55, being the difference between the contract price and the price paid therefor, for which plaintiff prays judgment and costs, &c., and you will serve the said defendants with the accompanying copy of said petition and copy of

9 this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the

Supreme Court of the United States, and the seal of our said circuit court, at the city of Austin, this 17 day of November, A. D. eighteen hundred and one hundred and eighth and the one hundred and eighth year of the Independence of the United States of America.

[L. S.] M. HOPKINS,
Clerk,
By SAM HOPKINS,
Deputy Clerk.

(Endorsed in the following words, to wit:) File No. 1921, law side. United States vs. E. P. Phillips, Jno. Cardwell, and Dennis Corwin. Original citation to Dennis Corwin, county of Travis, issued 27 day of November, 1883. M. Hopkins, clerk. Received in office 27 day of November, 1883. Not executed, defendant not found. Hal. L. Gosling, U. S. M., by J. H. Ingram, deputy U. S. M.

United States circuit court, western district of Texas.

The President of the United States to the marshal of the western district of Texas, greeting:

You are hereby commanded to summon Dennis Corwin, if he be found in your district, to be and appear before the honorable the circuit court of the United States, at a court to be holden in and for the western district of Texas, at the city of Austin, on the first Tuesday of January next, to answer a petition filed in said court on the 17 day of November, 1883, in a certain suit, No. 1921, in which said suit the United States, and who sue under the style of The United States, is plaintiff, and Edwin P. Phillips, John Cardwell, and Dennis Corwin, who are resident citizens of the county of Travis, western district of Texas, and who are sued under the style of Ed. Phillips, Dennis Corwin, and John Cardwell, are defendant, the nature of the demands set out in said petition being a suit for debt for failure to carry out two certain contracts (called therein articles of agreement) to deliver to the Quartermaster's Dept. at the military post at San Antonio, not exceeding 1,000,000 pounds of good merchantable oats, and not exceeding 1,000,000 pounds good merchantable corn. Plantiff alleges that she was compelled to purchase for her own use 845,027 of oats at a cost of $19,035.72, and 477,165 pounds of corn at the cost of $9,819.84, to supply her wants, to pl'ff damage in the sum of $11,564.65, being the difference between the contract price and price paid therefor, for which pl'ff prays judgment, cost, &c., and you will serve the said with the accompanying copy of said petition and copy of this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of our said circuit court, at the city of Austin, this 17 day of November, A. D. eighteen hundred and eighty-three, and the one hundred and eighth year of the Independence of the United States of America.

[L. S.] M. HOPKINS,
Clerk,
By SAM HOPKINS,
Deputy Clerk.

(Endorsed in the following words, to wit:) File No. 1921, law side. In U. S. circuit court for the western district of Tex., at Austin, holding ses-

sions. United States vs. E. P. Phillips, Jno. Caldwell, and Dennis Corwin. Citation to Dennis Corwin, county of Travis. Issued 17 day of November, A. D. 1883. M. Hopkins, clerk. Received in office 22 day of November, 1883. Executed on the 29th day of December, A. D. 1883, by handing to the within-named defendant, in person, a true copy of this writ, certified to by the clerk of the court under the seal of the court. Hal H. Gosling, U. S. M., by C. Von Carlowitz, deputy U. S. M.

11 United States circuit court, western district of Texas.

The President of the United States to the marshal of the western district of Texas, greeting:

You are hereby commanded to summon John Cardwell, of Travis County, if to be found in your district, to be and appear before the honorable the circuit court of the United States, at a court to be holden in and for the western district of Texas, at the city of Austin, on the first Tuesday of January next, to answer a petition filed in said court on the 17 day of November, 1883, in a certain suit, No. 1921, in which said suit the United States of America, and who sues under the style of The United States, is plaintiff, and Edwin P. Phillips, Dennis Corwin, and John Cardwell, who are resident citizen(s) of the county of Travis, western district of Texas, and who are sued under the style of Edwin P. Phillip, Jno. Cardwell, and Dennis Corwin, defendants. The nature of the demand set out in said petition being a suit for debt for failure to carry out two certain contracts (called therein articles of agreement) to deliver to the Quartermaster's Department, at the military post at San Antonio, not exceeding 1,000,000 pounds of good merchantable oats, and not exceeding 1,000,000 pounds of good merchantable corn. Plaintiff alleges that she was compelled to purchase for her own use 845,027 pounds of oats at a cost of 19,035.72, and 477,165 pounds of corn, at a cost of $9,819.84, which plaintiff alleges she needed to supply her wants, to plaintiff's damage in the sum of $11,564.55, being the difference between the contract price and the price paid therefor, for which plaintiff prays judgment and
12 costs, &c., &c.; and you will serve the said defendant with the accompanying copy of this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of our said circuit court, at the city of Austin, this 17 day of November, A. D. eighteen hundred and eighty-three, and the one hundred and eighth year of the Independence of the United States of America.

M. HOPKINS,
Clerk,
By SAM HOPKINS,
Deputy Clerk.

(Endorsed in the following words, to wit:) File No. 1921, law side. In U. S. circuit court for the western district of Tex., at Austin, holding sessions. United States vs. E. P. Phillips, Jno. Cardwell, and Dennis Corwin. Original citation to Jno. Cardwell, county of Travis. Issued 17 day of November, 1883. M. Hopkins, clerk. Received in office 22nd day of Novemb., 1883. Executed on the 23rd day of November, 1883, by handing to the within named defendant, in person, a true copy of this writ, certified to by the clerk of the court under the seal of the court. Hal L. Gosling, U. S. M., by C. Von Carlowitz, deputy U. S. M.

In U. S. circuit court for western district of Texas.

UNITED STATES,
vs.
EDWIN P. PHILLIPS, DENNIS CORWIN, & JOHN Cardwell.

Now comes the defendant, John Cardwell, in the above cause, and demurs to the petition of plaintiff filed in this cause, and for demurrer says that the allegations in plaintiff's petition contained are insufficient in law to entitle her to have and maintain her said cause of action.

13 Answering further, said defendant denies, all and singular, the allegations in plaintiff's petition contained, and of this he puts himself upon the country.

RECTOR, MOORE & THOMPSON,
Att'ys for Def'd't John Cardwell.

(Endorsed in the following words, to wit:) 1921. United States v. Edwin P. Phillips, Dennis Corwin, and John Cardwell. Original answer of John Cardwell. Filed January 14, 1884. M. Hopkins, cl'k, by Sam Hopkins, d'y clerk.

In U. S. circuit court for western district Texas.

UNITED STATES
vs.
EDWIN P. PHILLIPS, DENNIS CORWIN, John Cardwell.

And now comes the defendant, Dennis Corwin, and demurs to plaintiffs' petition, and says the same is insufficient in law, and of this he prays judgment of the court.

Answering further defendant denies all and singular the allegations in plaintiffs' petition contained strict proof of the same, and of this he puts himself upon the country.

GEO. F. PENDEXTER,
Att'y for Def't Corwin.

(Endorsed in the following words to wit:) No. 1921. United States vs. Edwin P. Phillips et al. Original answer of def't Corwin. Filed June 6th, 1884. Sam Hopkins, cl'k.

14 UNITED STATES
vs.
E. P. PHILLIPS ET AL. } 1921.

And now comes the defendant, John Cardwell, and demurs to plaintiffs' petition herein filed, and says the same is insufficient in law, and of this he prays judgment of the court.

And further answering defendant denies all and singular the allegations in plaintiffs' petition contained and demands strict proof of the same, and of this he puts himself upon the country.

RECTOR, MOORE & THOMPSON,
Att'ys for Defendant John Cardwell.

(Endorsed in the following words, to wit:) 1921. United States vs. Edwin P. Phillips et al. Filed original answer of John Cardwell. Filed August 3rd, A. D. 1885. Sam Hopkins, clerk.

UNITED STATES
vs. } 1931.
E. P. PHILLIPS ET AL.

We hereby waive a trial by jury in the above styled and numbered cause, and agree to submit the same to the court on the law and the facts.

U. S. ATTY, FOR PL'FF.
RECTOR, MOORE & THOMPSON,
Att'ys for Jno. Cardwell.
GEO. F. PENDEXTER,
Att'y for Def't Corwin.
A. J. EVANS,
U. S. Att'y.

15 (Endorsed in the following words, to wit:) No. 1921. United States vs. E. P. Phillips. Waiver. Jury. Filed Aug. 24, '85. Sam. Hopkins.

In the honorable United States circuit court for the 5th circuit & western district of Texas, holding sessions in the city of Austin, in said district, at its August term, 1885.

U. S.
vs. } No. 1921.
E. P. PHILLIPS ET AL.

Now comes the plaintiff, by her attorney, and, with leave of the court first had, files her trial amendment. She herewith filed a complete transcript of the acc'ts of the said def't, as well as the bonds, contracts, and all other papers in relation to *to* the matters in this suit, from the Treasury's books of the United States of America, and marks the same "Exhibit A," and prays the same be taken and made a part of her pleading in this case, &c., &c.

A. J. EVANS,
Att'y for Pl'ff.

(Endorsed in the following words, to wit:) No. 1921. United States vs. E. P. Phillips. Trial amendment. Filed August 24th, 1885. Sam. Hopkins, clerk.

U. S.
vs.
PHILLIPS ET AL.

And now come the defendants and move the court to strike from the files of this case all the papers included in the transcripts marked Exhibit A & attached to plaintiffs' petition except the contract bond and
16 vouchers. The remaining papers being matters of evidence, and not the obligations on which the suit is founded.

RECTOR, MOORE & THOMPSON,
GEO. F. PENDEXTER,
For Cardwell & Corwin.

(Endorsed in the following words, to wit:) 1921. U. S. vs. Phillips et al., 1st supplemental petition. Filed Aug. 24th, 1885. Sam Hopkins, clerk.

In the United States, 5th circuit, west dist. Texas, at Austin.

U. S.
vs.
E. P. PHILLIPS ET AL.

And now comes the pl'ff, by her att'y, and with leave of the court amends her pleadings, and says that on or about July 8th, 1881, she made due and legal demand of the said E. P. Phillips, defendant, that he, the said E. P. Phillips, should deliver the oats and corn in a large part, to wit, 150,000 pounds of each, but he failed and refused to so do, and every since has failed to carry out his contract.

A. J. EVANS,
U. S. Att'y.

(Endorsed in the following words, to wit:) 1921. U. S. vs. E. P. Phillips, et al. Trial of amendment. Filed August 25th, 1885. Sam Hopkins, clerk U. S. circ't c't.

17 THURSDAY MORNING, *September 3rd*, 1885.

THE UNITED STATES
vs.
DENNIS CORWIN AND JOHN CARDWELL.

This day this cause coming on to be heard, and a jury having been duly waived by written stipulation of plaintiff and defendants, and both parties announcing ready for trial, first came to be heard the exceptions of the defendants to plaintiff's pleadings; and the same being overruled, next came on to be heard the case on its merits. And the court, after hearing the pleadings, the evidence, and the argument of counsel for the respective parties, doth find that the defendants are not liable to plaintiff. Wherefore it is ordered and adjudged that defendants go hence without day, and without being taxed with any of the costs in this behalf expended. To which judgment and ruling of the court the plaintiff in open court excepted.

18 In U. S. circuit court, 5th circuit & west. district of Texas, at Austin sessions.

UNITED STATES
vs.
DENNIS CORWIN.

Be it remembered, on this day this cause coming on for trial, thereupon came the plaintiff, by her attorney, and the defendants, by their attorneys, and having announced themselves ready for trial before the court and waived a jury in due form, and thereupon the plaintiff, by her attorney, in due form moved the court to admit in evidence the Treasury transcript certified as the law requires, embracing all the transactions claimed as making the defendants liable, and filed in this case January 12th, A. D. 1884, as "Exhibit A," and here again made a part of this bill of exceptions as "Exhibit A—"

UNITED STATES OF AMERICA,
TREASURY DEPARTMENT,
September 11th, 1883.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed papers are true copies of the originals on file in this Department, and of the whole of said originals.

In witness whereof I have hereunto set my hand and caused the seal of the Treasury Department to be affixed on the day and year first above written.

CHAS. T. FOLGER,
Secretary of the Treasury.

No. of sett., 240. No. of claim, 62645.

TREASURY DEPARTMENT,
FIRST AUDITOR'S OFFICE,
September 18th, 1882.

I certify that there is due to the United States from Edwin P. Phillips:

1st. Under his contract with the United States, dated May 20th, 1881, to supply oats at San Antonio, Texas, being for the excess cost to the United States over and above the rate of said contract of purchasing in open market to supply a deficiency caused by his failure to fulfil said contract, the sum of six thousand eight hundred and thirty-five dollars and eighty-eight cents..... $6,835.88

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2nd. Under his contract with the United States, dated May 20th, 1881, to supply corn at San Antonio, Texas, being for the excess cost to the United States over and above the rate the said *said* contract of purchasing in open market to supply a deficiency caused by his failure to fulfil said contract, the sum of four thousand seven hundred and twenty-eight dollars and sixty-seven cents $4,728.67

$11,564.55

(Appropriation, Reg. Sup. Q. M. D., 1882,) as appears from the statements and vouchers herewith transmitted for the decision of the Second Comptroller of the Treasury thereon.

E. W. REIGHTLEY,
Auditor.

To Hon. J. M. BRODHEAD,
Second Comptroller of the Treasury.

SECOND COMPTROLLER'S OFFICE.

I admit and certify the above balance this 6th day of August, 1883.

JAS. S. DELANO,
Acting Second Comptroller.

Bond.

Know all men by these presents, that we, Ed. P. Phillips, of Austin, Travis County and State of Texas, as principal, and Dennis Corwin, of

Austin, in the county of Travis and State of Texas, and John Cardwell, of Austin, in the county of Travis and State of Texas, as sureties, are held and bound unto the United States of America in the penal
20 sum of three thousand ($3,000) dollars, to the payment of which sum, well and truly to be made, we do bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Given under our hands and seals this 23 day of May, eighteen hundred & eighty-one.

The condition of this obligation is such, that whereas the above bounden Ed. P. Phillips has, on the twentieth day of May, one thousand eight hundred and eighty-one, entered into a contract with Maj. W. B. Hughes, q'r m'r, U. S. Army, for furnishing and delivering at San Antonio, Tex., one million pounds oats.

Now, therefore, if the above bounden Ed. P. Phillips, his heirs, executors, and administrators, shall and will, in all respects, duly and fully observe and perform all and singular the covenants, conditions, and agreements in and by the said contract agreed and covenanted by him to be observed and performed, and according to the true intent and meaning of the said contract, and as well during any period of extension of said contract that may be granted on the part of the United States as during the original term of the same, then the above obligation shall be void and of no effect; otherwise to remain in full force and virtue.

EDWIN P. PHILLIPS. [SEAL.]
DENNIS CORWIN. [SEAL.]
JOHN CARDWELL. [SEAL.]

Witnesses:
JNO. Q. JOHNSON.
FRANK BROWN.
JNO. P. KIRK.

STATE OF TEXAS,
County of Travis, ss:

I, Dennis Corwin, one of the sureties named in the within bond, do swear that I am pecuniarily worth the sum of three thousand
21 (3,000) dollars over and above all my debts and liabilities.

DENNIS CORWIN.

Before me, Frank Brown, clerk county court, Travis County, personally appeared Dennis Corwin, who, being duly sworn, says the statements contained in the foregoing affidavit are true.

Given under my hand and the seal of said court this 23d May, 1881.

[SEAL.] FRANK BROWN,
Cl'k Co. Ct., Travis Co., Texas.

I, E. B. Turner, do hereby certify that Dennis Corwin, the surety abovenamed, is personally known to me, and that to the best of my knowledge and belief he is pecuniarily worth, over and above all his debts and liabilities, the sum stated in the accompanying affidavit subscribed by him.

E. B. TURNER,
U. S. Judge.

STATE OF TEXAS,
County of Travis, ss:

I, John Cardwell, one of the sureties named in the within bond, do swear that I am pecuniarily worth the sum of three thousand (3,000) dollars, over and above all my debts and liabilities.

JOHN CARDWELL.

Before me, Frank Brown, clerk county court, personally appeared John Cardwell, who, being sworn, says the statements contained in the foregoing affidavit are true.

Given under my hand and the seal of said court May 23d, 1881.

[SEAL.] FRANK BROWN,
Clerk C. Ct., T. C.

22 I, E. B. Turner, do hereby certify that John Cardwell, the surety above named, is personally known to me, and that to the best of my knowledge and belief, he is pecuniarily worth over and above all his debts and liabilities, the sum stated in the accompanying affidavit subscribed by him.

E. B. TURNER,
U. S. Judge.

(Indorsed in the following words to wit:) Bond for the fulfillment of the contract between Maj. Wm. B. Hughes, Qr. Mr. U. S. A., and Ed. P. Phillips, dated 25th May, 1881, *at San* 000 lbs. oats, at San Antonio, Tx. Amount $3,000.

Articles of agreement entered into this twentieth day of May, eighteen hundred and eighty-one, between Maj. Wm. B. Hughes, Quartermaster United Army, of the first part, and Ed. P. Phillips, of Austin, Travis County, and State of Texas, of the second part.

This agreement witnesseth, that the said Maj. Wm. B. Hughes, for and on behalf of the United States of America, and the said Ed. P. Phillips, for himself, his heirs, executors, and administrators, have mutually agreed, and by these presents do mutually covenant and agree, to and with each others, as follows, viz:

ARTICLE I.—That the said Ed. P. Phillips shall furnish or cause to be supplied and delivered to the quartermaster's department, U. S. Army, at the military station of San Antonio, Texas, such quantity as may be required, not exceeding in all one million (1,000,000) pounds, of good merchantable oats, of the best quality, free from dirt or other foreign matter, to be delivered in good new burlap sacks, each sack to con-
23 tain about one hundred and twenty-eight pounds of oats, weight of the sacks to be deducted; (the said oats to be furnished and delivered as may be required for the wants of the said station, between the first day of July, 1881, and the thirtieth day of June, 1882, in such quantities and at such times as the receiving officer may require).

ARTICLE II.—That the said oats when delivered shall be subject to inspection on behalf of the United States, as provided by paragraph II, General Orders No. 9, dated Headquarters Department of Texas, May 3, 1875.

ARTICLE III.—Payment shall be made monthly, at the office of the chief quartermaster department of Texas, unless otherwise directed, upon the delivery of and upon *and upon* certified vouchers made by the receiving officer, provided the vouchers are complete, reciting that the oats has been inspected as required, and provided that the contractor is not indebted to the United States under Article VII, of this agreement, in the funds furnished by the Government for public disbursement; and in the event of the contracting officer being without funds when payment is due, then payment shall be made so soon thereafter as funds shall be received by him for that purpose. It is, however, understood and agreed that when one hundred thousand (100,000) pounds of oats shall have been delivered, inspected, and received, a voucher for that quantity shall be prepared and forwarded to the chief quartermaster of the department, to be retained until completion of contract, when the retained voucher shall be paid.

ARTICLE IV.—That deliveries on this contract shall, if required, commence on the first day of July, eighteen hundred and eighty-one,
24 provided the agreement is approved by the commanding general Dept. of Texas, otherwise not until such approval is obtained.

ARTICLE V.—That it is expressly agreed and understood that this contract shall be non-effective until an appropriation adequate to its fulfillment is granted by Congress and is available.

ARTICLE VI.—That for and in consideration of the faithful performance of the stipulations of this agreement the party of the second part shall be paid, at the office of the chief quartermaster department of Texas, at San Antonio, Tex., as follows: The sum of forty-two (42) cents per bushel of thirty-two pounds for each and every bushel delivered, inspected, and accepted under this contract between the 1st day of July, 1881, and the 31st day of Dec., 1881, and the sum of fifty-two (52) cents per bushel for each and every bushel delivered, inspected, and accepted under this contract between the 1st day of Jan'y, 1882, and the 30 day of June, 1882, of thirty-two pounds.

ARTICLE VII.—That in case of failure of the said party of the second part to comply with the stipulations of this contract according to the true intent and meaning thereof, then the party of the first part shall have the power to supply the deficiency by purchase or otherwise, and have the contractor charged with the difference in the cost to the Government, subject to the approval of the department com'd'r.

ARTICLE VIII.—Neither this contract nor any interest therein shall be transferred by the said party of the second part to any other party, and any such transfer shall cause the annulment of the contract so far as the United States are concerned. All rights of action, however, for
25 any breach of this contract by the said party of the second part are reserved to the United States.

ARTICLE IX. No member of or delegate to Congress, nor any person belonging to or employed in the military service of the U. States, is or shall be admitted to any share or part of this contract, or to any benefit which may arise therefrom.

ARTICLE X. This contract shall be subject to approval of the commanding general Department of Texas.

In witness whereof the undersigned have hereunto placed their hands and seals the date first hereinbefore written.

WM. B. HUGHES, [SEAL.]
Quartermaster, U. S. Army.
EDWIN P. PHILLIPS. [SEAL.]

Witnesses:
M. W. HOLLEY,
JNO. Q. JOHNSON.

(Executed in quintuplicate.)
Approved June 19, 1881.

C. C. AUGUR,
Brig. Gen'l, U. S. A., Com'd'g Dep't of Tex.

(Endorsed in the following words, to wit:) Oats. Articles of agreement between Maj. Wm. B. Hughes, quartermaster U. S. A., ch'f q. m., Dept. T'x, and Ed. P. Phillips, Austin, Travis Co., Texas, for furnishing 1,000,000 lbs. oats at San Antonio, Texas.

Dated 20 May, 1881; expires 30 June, 1882; bond, $3,000.

Bond.

26 Know all men by these presents that we, Ed. P. Phillips, of Austin, county of Travis and State of Texas, as principal, and Dennis Corwin, of Austin, in the county of Travis and State of Texas, and John Cardwell, of Austin, in the county of Travis and State of Texas, as sureties, are held and bound ounto the United States of America in the penal sum of two thousand one hundred and fifty ($2,150.00) dollars, to the payment of which sum, well and truly to be made, we do bind ourselves, our heirs, executors, and admi'strators, jointly and severally, firmly by these presents.

Given under our hands and seals this twenty-third day of May, eighteen hundred and eighty-one.

The condition of this obligation is such, that whereas the above-bounden Ed. P. Phillips has, on the twentieth day of May, one thousand eight hundred and eighty-one, entered into a contract with Major William B. Hughes, quartermaster U. S. Army, for furnishing at San Antonio, Texas, 1,000,000 pounds of corn.

Now, therefore, if the above-bounden Ed. P. Phillips, his heirs, executors, and administrators, shall and will, in all respects, duly and fully observe and perform all and singular the covenants, conditions, and agreements in and by the said contract agreed and covenanted by him to be observed and performed, and according to the true intent and meaning of the said contract, and as well during any period of extension of said contract that may be granted on the part of the United States as during the original term of the same, then the above obligation shall be void and of no effect; otherwise, to remain in full force and virtue.

27 EDWIN P. PHILLIPS. [SEAL.]
DENNIS CORWIN. [SEAL.]
JOHN CARDWELL. [SEAL.]

Witnesses:
JNO. Q. JOHNSON,
FRANK BROWN,
JNO. P. KIRK.

STATE OF TEXAS,
County of Travis, ss:

I, Dennis Corwin, one of the sureties named in the within bond, do swear that I am pecuniarily worth the sum of two thousand one hundred and fifty (2,150) dollars over and above all my debts and liabilities.

DENNIS CORWIN.

Before me, Frank Brown, clerk county court Travis County, personally appeared Dennis Corwin, who, being by me duly sworn, says the statements contained in the foregoing affidavit are true.

Given under my hand and the seal of said court this 23d day of May, 1881.

[SEAL.]

FRANK BROWN,
Clerk County Court Travis County, Texas.

I, Ezekiell B. Turner, U. S. district judge, do hereby certify that Dennis Corwin, the surety above named, is personally known to me, and that, to the best of my knowledge and belief, he is pecuniarily worth, over and above all his debts and liabilities, the sum stated in the accompanying affidavit subscribed by him.

E. B. TURNER,
U. S. Judge.

STATE OF TEXAS,
County of Travis, ss:

28 I, John Cardwell, one of the sureties named in the within bonds, do swear that I am pecuniarily worth the sum of two thousand one hundred and fifty (2,150) dollars over and above all my debts and liabilities.

JOHN CARDWELL.

Before me, Frank Brown, clerk county court Travis County, personally appeared John Cardwell, who, being by me sworn, says the statements contained in the foregoing affidavit are true.

Given under my hand and the seal of said court this May 23d, 1881.

[SEAL.]

FRANK BROWN,
Clerk Co. Court, Travis Co., Texas.

I, E. B. Turner, U. S. district judge, do hereby certify that John Cardwell, the surety above named, is personally known to me, an' that, to the best of my knowledge and belief, he is pecuniarily worth, over and above all his debts and liabilities, the sum stated in the accompanying affidavit subscribed by him.

E. B. TURNER,
U. S. Judge.

(Endorsed in the following words, to wit:) Bond for the fulfillment of the contract between Major Wm. B. Hughes, quartermaster U. S. A., and Ed. P. Phillips, dated May 21st, 1881, for furnishing at San Antonio, Texas, 1,000,000 lbs. corn. Amount, $2,150.

29 Articles of agreement entered into this twentieth day of May, eighteen hundred and eighty-one, between Major William B.

Hughes, quartermaster United States Army, of the first part, and Edwin P. Phillips, of Austin, county of Travis and State of Texas, of the second part.

This a*reeg*ment witnesseth that the said Major William B. Hughes, for and on behalf of the United States of America, and the said Edwin P. Phillips, for himself, his heirs, executors, and administrators, have mutually agreed, and by these presents do mutually covenant and agree, to and with each other as follows, *wiz*:

ARTICLE I. That the said Edwin P. Phillips shall furnish or cause to be supplied and delivered to the quartermaster's department, U. S. Army, at the military station of San Antonio, Texas, such quantity as may be required, not exceeding in all one million (1,000,000) pounds of good, merchantable corn, of the best quality, free from dirt or other foreign matter, to be delivered in good new gunny or American "A" seamless sacks, each sack to contain about one hundred and twenty-eight pounds of corn, weight of the sacks to be deducted, the said corn to be furnished and delivered, as may be required for the wants of the said station, between the first day of July, 1881, and the thirtieth day of June, 1882, in such quantities and at such time as the receiving officer may require.

ARTICLE II. That the said corn, when delivered, shall be subject to inspection on behalf of the United States, as provided by paragraph II, General Orders No. 9, dated headquarters Department of Texas, May 3, 1875.

30 ARTICLE III. Payment shall be made monthly at the office of the chief quartermasters, Department of Texas, unless otherwise directed, upon the delivery of the supplies and upon certified vouchers made by the receiving officer; provided the vouchers are complete, reciting that the corn has been inspected as required, and provided that the contractor is not indebted to the United States under Article VII of this agreement, in the funds furnished by the Government for public disbursement and in the event of the contracting officer being without funds when payment is due, then payment shall be made so soon thereafter as funds shall be received by him for that purpose. It is, however, understood and agreed that when one hundred thousand (100,000) pounds of corn shall have been delivered, inspected, and received a voucher for that quantity shall be prepared and forwarded to the chief quartermaster of the department, to be retained until completion of contract when the retained voucher shall be paid.

ARTICLE IV. That deliveries on this contract shall, if required, commence on the first day of July, eighteen hundred and eighty-one, provided that the agreement is approved by the commanding general, Department of Texas; otherwise, not until such approval is obtained.

ARTICLE V. That it is expressly agreed and understood that this contract shall be non-effective until an appropriation adequate to its fulfillment is granted by Congress and is available.

ARTICLE VI. That for and in consideration of the faithful performance of the stipulations of this agreement the party of the second

31 part shall be paid at the office of the chief quartermaster, Department of Texas, at San Antonio, Texas, as follows: The sum of fifty-nine and three-fourths (59¾) cents for each and every bushel of fifty-six pounds of corn delivered, inspected, and accepted under this contract.

ARTICLE VII. That in case of failure of the said party of the second part to comply with the stipulations of this contract according to the true intent and meaning thereof, then the party of the first part shall have the power to supply the deficiency, by purchase, or otherwise, and have the contractor charged with the difference in the cost to the Government, subject to the approval of the department commander.

ARTICLE VIII. Neither this contract, nor any interest therein, shall be transferred by the said party of the second part to any other party and any such transfer shall cause the annulment of the contract so far as the United States are concerned. All rights of action, however, for any breach of this contract by the said party of the second part, are reserved to the United States.

ARTICLE IX. No member of, or delegate to, Congress, nor any person belonging to or employed in the military service of the United States, is or shall be admitted to any share or part of this contract, or to any benefit which may arise therefrom.

ARTICLE X. This contract shall be subject to approval of the commanding general, Department of Texas.

32 In witness whereof the undersigned have hereunto placed their hands and seals the date first hereinbefore written.

WM. B. HUGHES, [SEAL.]
Quartermaster, U. S. Army.
EDWIN P. PHILLIPS. [SEAL.]

Witnesses:
M. W. HOLLEY,
JNO. Q. JOHNSON.

(Executed in quintuplicate.)
Approved June 19, 1881.

C. C. AUGUR,
Brigadier Gen'l U. S. Army, Comm'd'g Dep't of Texas.

(Endorsed in the following words, to wit:) Articles of agreement between Major Wm. B. Hughes, quartermaster, U. S. A., chief q'r m'r. Dep't of Texas, and E. P. Phillips, Austin, Texas, for furnishing 1,000,000 lbs. of corn at San Antonio, Texas dated May 20, 1881. Expires June 30, 1882. Bond, $2,150.00.

OFFICE DEPOT QUARTERMASTER, U. S. ARMY,
San Antonio, Texas, August 2nd, 1881.

CHIEF QUARTERMASTER, DEPARTMENT OF TEXAS,
San Antonio:

SIR: I respectfully request authority to purchase 40,000 lbs. of oats, in open market, the contractor, Mr. E. P. Phillips, having failed to make deliveries under his contract.

Very respectfully, your ob't servant,
(S'g'd) L. E. CAMPBELL,
Capt. & A. Q. M., U. S. A., Depot Q'r M'r.

6992——2

33 [1st endorsement.]

H'DQ'RS, DEP'T OF TEXAS,
OFFICE OF CHIEF QUARTERMASTER,
San Antonio, Texas, Aug. 2d, 1881.

Respectfully referred to the adg't general, Department of Texas, recommending approval of this request in accordance with article 1 of the contract. Mr. Phillips, after having had due notice by requisition from the depot quartermaster to furnish certain quantities of grain, has so far failed to make any delivery, and the amount of grain for which authority is here requested to purchase in open market is absolutely needed for issue to the public and private animals pertaining to this station, and the San Antonio depot, and will last about ten days.

(S'g'd)

WM. B. HUGHES,
Major & Chief Q'r'master.

[2nd endorsement.]

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Aug. 3, 1881.

Respectfully returned by the commanding general to the chief quartermaster of the department approved.

(S'g'd.)

THOMAS M. VINCENT,
Adjutant-General.

[3rd endorsement.]

HDQRS. DEPOT OF TEXAS,
OFFICE CHIEF QUARTERMASTER,
San Antonio, Texas, Aug. 3, '81.

34 Respectfully returned to the depot quartermaster San Antonio, inviting attention to preceding endorsement.

(S'g'd)

W. B. HUGHES,
Major & Chief Quartermaster.

True copy:

L. E. CAMPBELL,
Capt. & A. Q'r M'r, U. S. A.

SAN ANTONIO, TEXAS, *August 5th*, 1881.

We certify that we have inspected and accepted of J. S. Muegge, in open market (40,000) forty thousand pounds of oats and found it of good quality.

JNO. NEWTON,
2nd Lt 16th Inft.
R. W. GETTY,
2nd Lt. 22 Inf.

[FORM No. 9.—Voucher to Abstract A.]

The United States to J. E. Muegge, Dr.

Place and date of purchase.	Regular supplies, fiscal year 1881-1882.		
San Antonio, Texas, August 5th, 1881.	For 40,000 pounds oats, @ 50c per bush. of 32 lbs.....	625	00
	Purchased upon market for use of public and private animals at the San Antonio Depot, as per authority attached.		

I certify that the above account is correct and just, and that the articles have been accounted for on my property return for the quarter ending on the 30th of September, 1881. L. E. CAMPBELL,
Capt. & Ass't Quartermaster, U. S. A.

Received at San Antonio, Texas, the 8th of August, 1881, of Maj. Wm. B. Hughes, Quartermaster, U. S. Army, the sum of six hundred & 35 twenty-five (625) dollars and —— cents, in full of the above account.
(Signed in duplicate.) J. E. MUEGGE.

(Endorsed in the following words, to wit:) Form No. 9, voucher No. 1, Abstract A. August, 1881. J. E. Muegge. Dollars $625\frac{00}{100}$. Paid August 8th, 1881. Check: No. 120; date, Aug. 8th, 1881; amount, $\$625\frac{00}{100}$; depository, San Antonio Nat. Bank. To be made in duplicate: One copy to be retained by the officer, one to be forwarded to the Quartermaster-General with Abstract A.

The authority for making a purchase, and a statement of the object and necessity for the same must accompany the voucher. If such authority has already been filed, it should be referred to in all subsequent vouchers for purchases under it.

If the purchase is made under a contract, the name of the contractor, date of contract, and its object should be given, as per example: Under contract of John Smith, for forage, Nov. 17, 188–.

No reference should be made to any agreement not in writing, and not transmitted to the Quartermaster-General's Office for file.

OFFICE DEPOT QUARTERMASTER, U. S. ARMY,
San Antonio, Texas, August 11th, 1881.

The CHIEF QUARTERMASTER, DEPARTMENT OF TEXAS,
San Antonio, Texas:

SIR: I respectfully request authority to purchase 80,000 lbs. oats, Mr. E. P. Phillips having failed to make deliveries under his contract.
36 Very respectfully, your obed't servant,
(Signed) L. E. CAMPBELL,
Captain & Ass't Qr. Mr., Depot Qr. Mr.

[1st endorsement.]

HEADQUARTERS DEPARTMENT OF TEXAS,
OFFICE CHIEF QUARTERMASTER,
San Antonio, Tex., August 12th, 1881.

Respectfully referred to the adjutant-general department of Texas, recommending approval of the within request, Mr. Phillips the contractor

having notified this office, as will be seen by the attached telegram, that he will not be able to make a delivery before the first day of September, and the amount herein stated will be required for issue at San Antonio depot for that period.

(Signed) WM. B. HUGHES,
Major & Chief Quartermaster.

[2nd endorsement.]

HEADQUARTERS DEPARMENT OF TEXAS,
San Antonio, August 12th, 1881.

Respectfully returned to the chief quartermaster of the department, whose recommendation contained in 1st endorsement whereon is approved by the commanding general.

(Signed) THOMAS M. VINCENT,
Adjutant General.

37 [3rd endorsement.]

HEADQUARTERS, DEPARTMENT OF TEXAS,
OFFICE CHIEF QUARTERMASTER,
San Antonio, Texas, August 12th, 1881.

Respectfully returned to the depot quartermaster, San Antonio, Texas, inviting attention to the preceding endorsements.

(Signed) WM. B. HUGHES,
Maj. & Chief Qr. Master.

A true copy.
L. E. CAMPBELL,
Capt., A. Q. M.

SAN ANTONIO, TEXAS, *August 23d,* 1881.

We certify that we have inspected and accepted of A. Philo eighty thousand (80,000) pounds of oats purchased under sealed proposals, by authority of the department commander, and found it of good quality.

JNO. NEWTON,
2 *Lt. 16th Inf.*
R. W. GETTY,
2 *Lt. 22d Inf.*

[FORM No. 9.—Voucher to Abstract A.]

The United States to A. Philo, Dr.

Place and date of purchase.	Regular supplies, fiscal year 1881–1882.	Dollars.	Cts.
San Antonio, Texas, August 23d, 1881.	For 80,000 pounds oats, @ 49½c per bush. (32 lbs. to the bushel).	1,237	50
	Purchased in open market for use of public and private animals at the San Antonio Depot, as per authority herewith.		

38 I certify that the above account is correct and just, and that the articles have been accounted for on my property return for the quarter ending on the 30th of September, 1881.

L. E. CAMPBELL,
Capt. and Ass't Quartermaster, U. S. A.

Received at San Antonio, Texas, the 25 of August, 1881, of Major Wm. B. Hughes, quartermaster, U. S. Army, the sum of twelve hundred and thirty-seven (1,237) dollars and fifty (50) cents, in full of the above account.

(Signed in duplicate.) A. PHILO.

(Endorsed in the following words, to wit:) Form No. 9. Voucher No. 6, Abstract A, August, 1881. A Philo. Dollars, 1,237$\frac{50}{100}$. Paid, August 25th, 1881. Check No. 131. Date, August 25, 1881. Amount, $1,237.50. Depository, San Antonio Nat. Bank. To be made in duplicate, one copy to be retained by the officer, one to be forwarded to the Quartermaster-General with Abstract A.

The authority for making a purchase and a statement of the object and necessity for the same must accompany the voucher. If such authority has already been filed, it should be referred to in all subsequent vouchers for purchases under it.

If a purchase is made under a contract, the name of the contractor, date of contract, and its object should be given, as per example, "Under contract of John Smith, for forage, Nov. 17, 188–."

No reference should be made to any payment not in writing and not transmitted to the Quartermaster-General's office for file.

39 OFFICE DEPOT QUARTERMASTER, U. S. ARMY,
San Antonio, Texas, Sept. 2nd, 1881.

The CHIEF QUARTERMASTER, DEPARTMENT OF TEXAS,
San Antonio, Texas:

SIR: Mr. E. P. Phillips, grain contractor, having failed to make deliveries under his contract, I respectfully request authority to purchase in open market 60,000 pounds oats and 40,000 pounds corn.

I am, very respectfully, your obedient servant,

(Signed) L. E. CAMPBELL,
Capt. & Asst. Qr. M., Depot Qr. Mr.

[1st endorsement.]

HEADQUARTERS DEPARTMENT OF TEXAS,
OFFICE CHIEF QUARTERMASTER,
San Antonio, Tex., Sept. 2nd, 1881.

Respectfully forwarded to the adjutant-general Department of Texas, recommending approval.

(S'g'd) WM. B. HUGHES,
$\frac{3624}{1881}$ *Major & Chief Quartermaster.*

[2nd endorsement.]

HEADQUARTERS DEPARTMENT OF TEXAS,
OFFICE CHIEF QUARTERMASTER,
San Antonio, Texas, Sept. 3rd, 1881.

Respectfully returned to the depot quartermaster inviting attention to preceding endorsement.

(Signed) WM. B. HUGHES,
40 *Maj. & Chief Quartermaster.*

A true copy.
L. E. CAMPBELL,
Capt. & A. Q. M.

SAN ANTONIO, TEXAS,
September 8th, 1881.

We certify that we have inspected and accepted of J. Landa, in open market, sixty thousand (60,000) pounds of oats, purchased under sealed proposals, and found it of good quality.

CLAYTON HALE,
Captain 16th Infty.
R. W. GETTY,
2nd Lieut. 22 Inf.

The United States to Joseph Landa, Dr.

Place and date of purchase.	Regular supplies, fiscal year 1881 to '82.	Dollars.	Cts.
San Antonio, Texas, September 12th, 1881.	For 60,000 pounds of oats, sacked, @$2.16 per 100 lbs	1,296	00
	Purchased by invitation for sealed proposals as per authority herewith.		

I certify that the above account is correct and just, and that the articles have been accounted for on my property return for the quarter ending on the 30 day of September, 1881.

L. E. CAMPBELL,
Capt. & Ass't Quartermaster, U. S. A.

Received, at San Antonio, Texas, the 15 of September, 1881, of Major Wm. B. Hughes, quartermaster, U. S. Army, the sum of twelve
41 hundred and ninety-six (1,296) dollars and cents, in full of the above account.
(Signed in duplicate.) JOSEPH LANDA.

(Endorsed in the following words, to wit:) Form No. 9. Voucher No. 17. Abstract A. September, 1881, Joseph Landa, dollars 1,296.00 Paid September 15, 1881. Check No. 163. Date, September 15, 1881. Amount, $1,296.00. Depository, San Antonio Nat. Bank. To be made in duplicate, one copy to be retained by the officer, one to be forwarded to the Quartermaster-General with Abstract A.

The authority for making a purchase and a statement of the object and necessity for the same must accompany the voucher. If such authority has already been filed, it should be referred to in all subsequent vouchers for purchases under it.

If the purchase is made under a contract, the name of the contractor, date of contract, and its object should be given, as per example: Under contract of John Smith for forage, Nov. 17, 188–.

No reference should be made to any agreement not in writing and not transmitted to the Quartermaster-General's Office for file.

OFFICE DEPOT QUARTERMASTER, U. S. ARMY,
San Antonio, Texas, October 4th, 1881.

The CHIEF QUARTERMASTER, DEPARTMENT OF TEXAS,
San Antonio, Texas:

SIR: I have the honor to request that authority be given for the
42 purchase in open market, under the provision of par. 11, General Orders No. 40, headquarters of the Army, A. G. O., series 80, of

100,000 pounds of oats, the contractor, Mr. E. P. Phillips, having failed to make deliveries under his contract.

I am, sir, very respectfully, your obedient servant,

(S'g'd) L. E. CAMPBELL,
Captain and Asst. Quartermaster, Depot Quartermaster.

[1st indorsement.]

H'DQ'RS DEP'T OF TEXAS,
OFFICE CHIEF QUARTERMASTER,
San Antonio, Texas, Oct. 5th, 1881.

Respectfully referred to the adjutant-general dep't of Texas, recommending approval.

(S'g'd) L. E. CAMPBELL,
Capt. & A. Q. M., U. S. A., Act'g Chief Q'rmaster.

[2nd indorsement.]

HEADQUARTERS DEP'T OF TEXAS,
San Antonio, Tex., Oct. 6th, 1881.

Respectfully returned by the commanding general to the chief quartermaster of the department, approved.

(S'g'd) THOMAS M. VINCENT,
Adjutant-General.

[3rd indorsement.]

H'DQ'RS DEP'T OF TEXAS,
OFFICE CHIEF QUARTERMASTER,
San Antonio, Texas, Oct. 6th, 1881.

43 Respectfully returned to the dep't quartermaster, San Antonio, inviting attention to preceding endorsement.

(S'g'd) L. E. CAMPBELL,
Captain and Asst. Q'rm'r, Act'g Chief Quartermaster.

A true copy.
COLON AUGUR,
1st Lt. 2nd Cav'r'y, U. S. A.

[FORM No. 9.—Voucher to Abstract A.]

The United States to J. E. Muegge Dr.

Place and date of purchase.	Regular supplies, 1881-'82.	Dollars.	Cts.
San Antonio, Texas, October 19th, 1881.	For 50,000 pounds oats @ 72½c. per bush	1,332	81
	50,000 " oats @ 73½c. per bush	1,148	44
		2,281	25
	Purchased by invitation for sealed bids, as per authority attached.		

Under authority in letter from headquarters department of Texas, dated September 19th, 1881, I certify that I have inspected and accepted the above quantity of oats and found it of good quality.

I certify that the above account is correct and just, and that the articles have been accounted for on my property return for the quarter ending on the 31st of December, 1881.

L. E. CAMPBELL,
Capt. & Asst. Quartermaster U. S. A.

44 Received at San Antonio, Texas, the 19th of October, 1881, of Capt. L. E. Campbell, assistant quartermaster, U. S. Army, the sum of two thousand two hundred and eighty-one (2,281) dollars and twenty-five (25) cents, in full of the above account.

(Signed in duplicate) J. E. MUEGGE.

(Endorsed in the following words, to wit:) Form No. 9. Regular supplies, 1881–'82. Voucher No. 57. Abstract A. October, 1881. J. E. Muegge. Dollars 2,281.25. Paid October 19th, 1881. Check No. 12,968. Date Oct. 19, 1881. Amount, $2,281.25. Depository, asst. treas'r, N. Y. To be made in duplicate. One copy to be retained by the officer, one to be forwarded to the Quartermaster-General with Abstract A.

The authority for making a purchase and a statement of the object and necessity for the same must accompany the voucher. If such authority has already been filed, it should be referred to in all subsequent vouchers for purchases under it.

If the purchase is made under a contract, the name of the contractor, date of contract, and its object should be given, as per example: Under contract of John Smith for forage, Nov. 17, 188 .

No reference should be made to any agreement not in writing and not transmitted to the Quartermaster-General's Office for file.

[FORM No. 9.—Voucher to Abstract A.]

The United States to J. E. Labatt, Dr.

Place and date of purchase.		Dollars.	Cts.
San Antonio, Texas, October 31st, 1881.	For 80,000 pounds oats @ 77c. per bushel of 32 lbs. to the bushel. Delivered under his contract with the chief quartermaster Department of Texas, dated Oct. 29th, 1881.	1,925	00

Under authority in letter from head qrs. Department of Texas, dated September 19th, 1881, I certify that I have inspected and accepted the above amount of oats and found it of good quality.

I certify that the above account is correct and just, and that the articles have been accounted for on my property return for the quarter ending on the 31st of December, 1881.

L. E. CAMPBELL,
Capt. & Asst. Quartermaster, U. S. A.

Received at San Antonio, Texas, the 20th of June, 1882, of Maj. J. G. C. Lee, quartermaster, U. S. Army, the sum of nineteen hundred & twenty-five (1,925) dollars and —— cents, in full of the above account.

(Signed in duplicate.) R. sup.

J. E. LABATT.

81–2.

(Endorsed in the following words, to wit:) Form No. 9. Voucher No. 28. Abstract A. June, 1881. J. E. Labatt. Dollars, 1,925.00.
46 Paid June 20th, 1882. Check No. 62831. Date, June 30, 1882. Amount, $2,960.71. Depository, New York. To be made in duplicate. One copy to be retained by the officer, one to be forwarded to the Quartermaster-General with Abstract A.

The authority for making a purchase, and a statement of the object and necessity for the same, must accompany the voucher. If such authority has already been filed it should be referred to in all subsequent vouchers for purchases under it.

If the purchase is made under a contract, the name of the contractor, date of contract, and its object should be given as per example: Under contract of John Smith for forage, Nov. 17, 188 .

No reference should be made to any agreement not in writing, and not transmitted to the Quartermaster-General's Office for file.

[FORM No. 9.—Voucher to Abstract A.]

The United States to J. E. Labatt, Dr.

Place and date of purchase.	Regular supplies.	Dollars.	Cts.
San Antonio, Texas, November 21, 1881.	For 130,188 pounds of oats @ 77c. per bushel (32 lbs. to the bushel). Delivered under his contract with the chief quartermaster Department of Texas, dated October 29th, 1881.	3,132	65

Under authority in letter from headquarters department of Texas, dated September 19th, 1881, I certify that I have inspected and accepted the above amount of oats, and found it of good quality.

47 I certify that the above account is correct and just, and that the articles have been accounted for on my property return for the quarter ending on the 31st of December, 1881.

L. E. CAMPBELL,
Capt. & Asst. Quartermaster, U. S. Army.

Received at San Antonio, Texas, the 23 of November, 1881, of Captain L. E. Campbell, assistant quartermaster U. S. Army, the sum of three thousand one hundred and thirty-two (3,132) dollars and sixty-five cents, in full of the above account.

(Signed in duplicate.) J. E. LABATT.

(Endorsed in the following words, to wit:) Form No. 9. Voucher No. 69. Abstract A. November, 1881. J. E. Labatt. Dollars, $3,132\frac{65}{100}$. Paid November 23, 1881. Check No. 93,848. Date, Nov. 23, 1881. Amount, $3,455.66. Depository, ass't treas'r, N. Y. To be made in

duplicate. One copy to be retained by the officer, one to be forwarded to the Quartermaster-General with Abstract A.

The authority for making a purchase and a statement of the object and necessity for the same must accompany the voucher. If such authority has already been filed, it should be referred to in all subsequent vouchers for purchases under it.

If the purchase is made under a contract, the name of the contractor, date of contract, and its object should be given, as per example: Under contract of John Smith, for forage, Nov. 17, 188 .

No reference should be made to any agreement not in writing and not transmitted to the Quartermaster-General's Office for file.

48 [FORM No. 9.—Voucher to Abstract A.]

The United States to J. E. Labatt, Dr.

Place and date of purchase.	Regular supplies, fiscal year 1881-'82.	Dollars.	Cts.
San Antonio, Texas, January 5, 1882.	For 86,232 pounds oats @ 77 ct. per bushel of 32 pounds....	2,074	95
	Delivered under his contract with the chief quartermaster Department of Texas, dated October 29th, 1881.		

Under authority in letter from Headquarters Department of Texas, dated September 19, 1881, I certify that I have inspected and accepted the above quantity of oats and found it of good quality.

I certify that the above account is correct and just, and that the articles have been accounted for on my property return for the quarter ending on the 31st of March, 1882.

L. E. CAMPBELL,
Capt. & Asst. Quartermaster, U. S. Army.

Received, at San Antonio, Texas, the 7 day of January, 1882, of Major Wm. B. Hughes, quartermaster, U. S. Army, the sum of two thousand and seventy-four (2,074) dollars and ninety-five (95) cents in full of the above account.

(Signed in duplicate.) J. E. LABATT.

(Endorsed in the following words, to wit:) Form No. 9. Regular supplies, 1881–'82, voucher No. 16. Voucher No. 16. Abstract A. January, 188 . J. E. Labatt. Dollars, 2,074.95. Paid January 7th, 1882. Check No. 28,612. Date, January 7th, 1882. Amount, $2,074.95.

49 Depository, A. T., New Orleans, La. To be made in duplicate. One copy to be retained by the officer, one to be forwarded to the Quartermaster-General with Abstract A.

The authority for making a purchase and a statement of the object and necessity for the same must accompany the voucher. If such authority has already been filed it should be referred to in all subsequent vouchers for purchases under it.

If the purchase is made under a contract, the name of the contractor,

date of contract, and its object should be given, as per example: Under contract of John Smith, for forage, Nov. 17, 188 .

No reference should be made to any agreement not in writing, and not transmitted to the Quartermaster-General's Office for file.

[FORM No. 9.—Voucher to Abstract A.]

The United States to J. E. Labatt, Dr.

Place and date of purchase.	Regular supplies, 1881-'82.	Dollars.	Cts.
San Antonio, Texas, February 9th, 1882.	For 34,581 pounds oats @ 77 cts. per bushel of 32 pounds.....	832	11
	Delivered under his contract with the chief quartermaster Department of Texas, dated October 29th, 1881.		

Under authority in letter from Headquarters Department of Texas, dated September 19th, 1881, I certify that I have examined and accepted the above quantity of oats and found it of good quality.

50 I certify that the above account is correct and just and that the articles have been accounted for on my property return for the quarter ending on the 31st of March, 1882.

L. E. CAMPBELL,
Capt. & Ass't Quartermaster U. S. A.

Received, at San Antonio, Texas, this 10 of February, 1882, of Capt. L. E. Campbell, ass't quartermaster, U. S. Army, the sum of eight hundred thirty-two (832) dollars and eleven (11) cents, in full of the above account.

(Signed in duplicate)

J. E. LABATT.

(Endorsed in the following words, to wit:) Form No. 9. Voucher No. 23. Abstract A. February, 1882. J. E. Labatt. Dollars 832.11. Paid February 10th, 1882. Check No. 114149. Date Feb. 10, 1882. Amount $832.11. Depository ass't treas'r, N. Y. To be made in duplicate; one copy to be retained by the officer, one to be fowarded to the Quartermaster-General with Abstract A.

The authority for making a purchase and a statement of the object and necessity for the same must accompany the voucher. If authority has already been filed it should be referred to in all subsequent vouchers for purchases under it.

If the purchase is made under a contract, the name of the contractor, date of contract, and its object should be given, as per example: Under contract of John Smith, for forage, Nov. 17, 188 .

No reference should be made to any agreement not in writing and not transmitted to the Quartermaster-General's Office for file.

51 [FORM No. 9.—Voucher to Abstract A.]

The United States to J. E. Labatt, Dr.

Place and date of purchase.	Regular supplies, 1881-1882.	Dollars.	Cts.
San Antonio, Texas, March 13th, 1882.	For 53,873 pounds oats, @ 77 cts. per bushel (32 pounds to the bushel). Delivered under his contract with the chief quartermaster, department of Texas, dated October 29th, 1881.	1,296	32

Under authority in letter from headquarters department of Texas, dated September 19th, 1881, I certify that I have inspected and accepted the above quantity of oats, and found it of good quality.

I certify that the above account is correct and just, and that the articles have been accounted for on my property return for the quarter ending on the 31st of March, 1882.

L. E. CAMPBELL,
Capt. & Ass't Quartermaster, U. S. A.

Received, at San Antonio, Texas, the 15th of March, 1882, of Captain L. E. Campbell, assistant quartermaster, U. S. Army, the sum of twelve hundred and ninety-six (1296) dollars and thirty-two (32) cents, in full of the above account.

(Signed in duplicate) J. E. LABATT.

(Endorsed in the following words, to wit:) Form No. 9. Voucher to Abstract A. March, 1882. J. E. Labatt. Dollars 1,296.32. Paid
52 March 15, 1882. Check No. 114191. Date, March 15th, 1882. Amount, $2,063.94. Depository, ass't treas'r, N. Y. To be made in duplicate; one copy to be retained by the officer, one to be forwarded to the Quartermaster-General with Abstract A.

The authority for making a purchase and a statement of the object and necessity for the same must accompany the voucher. If such authority has already been filed it should be referred to in all subsequent vouchers for purchases under it.

If the purchase is made under a contract, the name of the contractor, date of contract, and its object should be given as per example: Under contract of John Smith, for forage, Nov. 17, 188 .

No reference should be made to any agreement not in writing and not transmitted to the Quartermaster-General's Office for file.

[FORM No. 9.—Voucher to Abstract A.]

The United States to J. E. Labatt, Dr.

Date and place of purchase.		Dollars.	Cts.
San Antonio, Texas, March 14th. 1882.	For 39,901 pounds oats, @ 77 cts. per bushel of 32 pounds..... Delivered under his contract with the chief quartermaster, department of Texas, dated October 29th, 1881.	767	62

Under authority in letter from headq'r's department of Texas, dated September 19th, 1881, I certify that I have inspected and accepted the above quantity of oats, and found it of good quality.

53 I certify that the above account is correct and just and that the articles have been accounted for on my property return for the quarter ending on the 31st of March, 1882.

L. E. CAMPBELL,
Capt. Ass't Quartermaster, U. S. A.

Received, at San Antonio, Texas, the 15th of March, 1882, of Captain L. E. Campbell, ass't quartermaster, U. S. Army, the sum of seven hundred & sixty-seven (767) dollars and sixty-two (62) cents, in full of the above account.

(Signed in duplicate) J. E. LABATT.

(Endorsed in the following words, to wit:) Form No. 9. Voucher No. 31. Abstract A. March, 1882. J. E. Labatt. Dollars 767.62. Paid March 15th, 1882. Check No. 114191. Date March 15th, 1882. Amount, $2,063.94. Depository, ass't treas., N. Y. To be made in duplicate; one copy to be retained by the officer, one to be forwarded to the Quartermaster-General with Abstract A.

The authority for making a purchase and a statement of the object and necessity for the same must accompany the voucher. If such authority has already been filed it should be referred to in all subsequent vouchers for purchases under it.

If the purchase is made under a contract, the name of the contractor, date of contract, and its object should be given as per example: Under contract of John Smith, for forage, Nov. 17, 188 .

No reference should be made to any agreement not in writing and not transmitted to the Quartermaster-General's Office for file.

54 [FORM No. 9.—Voucher to Abstract A.]

The United States to J. E. Labatt, Dr.

Place and date of purchase.	Regular supplies 1881-'82.	Dollars.	Cts.
San Antonio, Texas, March 31st, 1882.	For 48,078 lbs. oats, @ 77c. per bush., 32 lbs. to the bushel.....	1,156	88
	Delivered under his contract with the chief quartermaster department of Texas, dated October 29, 1881.		

Under authority in letter from headquarters department of Texas, dated September 19, 1881, I certify that I have inspected and accepted above quantity of oats & found it of good quality.

I certify that the above account is correct and just and that the articles have been accounted for on my property return for the quarter ending on the 31 of March, 1882.

L. E. CAMPBELL,
Capt. Asst. Quartermaster, U. S. A.

Received at San Antonio, Texas, the 1 of April, 1882, of Capt. L. E. Campbell, asst. quartermaster, U. S. Army, the sum of eleven hundred and fifty-six (1156) dollars and eighty-eight (88) cents, in full of the above account.

(Signed in duplicate.)

J. E. LABATT.

(Endorsed in the following words, to wit:) Form No. 9. Voucher No. 1. Abstract A. April, 1882, J. A. Labatt, dollars 1156.88, paid April 1st, 1882. Check No. 115115; date, April 1, 1882; amount,
'55 $1,156.88. Depository, asst. treasr., N. Y. To be made in duplicate; one copy to be retained by the officer, one to be forwarded to the Quartermaster-General with Abstract A.

The authority for making a purchase and a statement of the object and necessity for the same must accompany the voucher. If such authority has already been filed it should be referred to in all subsequent vouchers for purchases made under it.

If the purchase is made under a contract, the name of the contractor, date of contract, and its object should be given, as per example: under contract of John Smith, for forage, Nov. 17, 188 .

No reference should be made to any agreement not in writing and not transmitted to the Quartermaster-General's office for file.

[FORM No. 9.—Voucher to Abstract A.]

The United States to J. E. Labatt, Dr.

Place and date of purchase.	Regular supplies, 1881-'82.	Dollars.	Cts.
San Antonio, Texas, April 13th, 1882.	For 16,083 pounds oats, @ 77c. per bushel.....	387	00
	Delivered under his contract with the chief quartermaster department of Texas, dated October 29th, 1881.		

Under authority in letter from headquarters department of Texas, dated September 19th, 1881, I certify that I have inspected and accepted the above quantity of oats and found it of good quality.

56 I certify that the above account is correct and just and that they have been accounted for on my property return for the quarter ending on the 30 of Jan'y, 1882.

L. E. CAMPBELL.

Capt. & Asst. Quartermaster, U. S. Army.

Received at San Antonia, Texas, the 13 of April, 1882, of Capt. L. E Campbell, ass't. quartermaster U. S. Army, the sum of three hundred and eighty-seven (387) dollars and — cents, in full of the above account.

(Signed in duplicate.)

J. E. LABATT.

(Endorsed in the following words, to wit:) Form No. 9. Voucher No. 13. Abstract A, April, 1882. J. E. Labatt. Dollars, 387.00. Paid, April 13, 1882. Check, No. 115130. Date, April 13, 1882. Amount, $387.00. Depository, ass't. treas'r, N. Y. To be made in

duplicate; one copy to be retained by the officer, one to be forwarded to the Quartermaster-General with Abstract A.

The authority for making a purchase and a statement of the object and necessity for the same must accompany the voucher. If such authority has already been filed, it should be referred to in all subsequent vouchers for purchases made under it.

If the purchase is made under a contract, the name of the contractor, date of contract, and its object should be given, as per example: Under contract of John Smith, for forage, Nov. 17, 188 .

No reference should be made to any agreement not in writing, and not transmitted to the Quartermaster-General's Office for file.

57 [FORM No. 9.—Voucher to Abstract A.]

The United States to J. E. Labatt, Dr.

Place and date of purchase.	Appro., regular supplies, 1881–1882.	Dollars.	Cts.
San Antonio, Texas, January 17th, 1882.	For 84,091 pounds oats @ 77c. per bushel of 32 pounds	2,023	44
	Delivered under his contract with the chief quartermaster department of Texas, dated October 29, 1881.		

Under authority in letter from h'dq'rs dep't of Texas, dated Sept. 19, 1881, I certify that I have inspected & accepted the above quantity of oats and found it of good quality.

I certify that the above account is correct and just, and that the articles have been accounted for on my property return for the quarter ending on the 30 of June, 1882.

L. E. CAMPBELL,
Capt. & Ass't Quartermaster, U. S. A.

Received at San Antonio, Texas, the 19th of June, 1882, of Capt. L. E. Campbell, ass't quartermaster, U. S. Army, the sum of two thousand & twenty-three (2,023) dollars and forty-four (44) cents, in full of the above account.

(Signed in duplicate.)

J. E. LABATT.

(Endorsed in the following words, to wit:) Form No. 9. Voucher No. 21. Abstract A. June, 1882. J. E. Labatt. Dollars, 2,023.44. Paid June 19th, 1882. Check, No. 115183. Date, June 19, 1882.
58 Amount, $2,023.44. Depository, ass't treas'r, N. Y. To be made in duplicate; one copy to be retained by the officer, one to be forwarded to the Quartermaster-General with Abstract A.

The authority for making a purchase and a statement of the object and necessity for the same must accompany the voucher. If such authority has already been filed, it should be referred to in all subsequent vouchers for purchases made under it.

If the purchase is made under a contract, the name of the contractor, date of contract, and its object should be given, as per example: Under contract of John Smith, for forage, Nov. 17, 188 .

No reference should be made to any agreement not in writing and not ransmitted to the Quartermaster-General's Office for file.

SAN ANTONIO, TEXAS, *September 13th*, 1881.

We certify that we have inspected of H. B. Adams in open market, forty thousand pounds of corn, purchased under sealed proposals, and found it of good quality.

CLAYTON HALE,
Captain, 16th Inf'ty.
R. N. GETTY,
2 Lieut., 22 Inf't'y.

59 [FORM No. 9.—Voucher to Abstract A.]

The United States to H. B. Adams, Dr.

Place and date of purchase.	Regular supplies fiscal year 1881–1882.	Dollars.	Cts
San Antonio, Texas, September 12th, 1881.	For 40,000 pounds corn, sacked, at $1.07 per bushel.....	$764	29
	Purchased by invitation for sealed proposals as per authority attached to voucher No. 17, Abstract "A." Major Wm. B. Hughes. Money account for September, 1881.		

I certify that the above account is correct and just and that the articles have been accounted for on my property return for the quarter ending on the 30th of September, 1881.

L. E. CAMPBELL,
Capt. and Asst. Quartermaster U. S. A.

Received at San Antonio, Texas, the 15 of September, 1881, of Major Wm. B. Hughes, quartermaster, U. S. Army, the sum of seven hundred and sixty-four (764) dollars and twenty-nine (29) cents, in full of the above account.

(Signed in duplicate.)

H. B. ADAMS.

(Endorsed in the following words, to wit:) Form No. 9. Voucher No. 16, Abstract A. September, 1881. H. B. Adams, dollars $764\frac{29}{100}$. Paid September 15, 1881. Check No. 15,499, dated September 15, 1881, amount $764.29. Depository, A. T., New York. To be made in duplicate, one copy to be retained by the officer, one to be forwarded
60 to the Quartermaster-General with Abstract A.

The authority for making a purchase and a statement of the object and necessity for the same must accompany the voucher. If such authority has already been filed it should be referred to in all subsequent vouchers for purchases under it.

If the purchase is made under a contract, the name of the contractor, date of contract, and its object should be given, as per example. Under contract of John Smith, for forage, Nov. 17, 188–.

No reference should be made to any agreement not in writing and not transmitted to the Quartermaster-General's Office for file.

[FORM No. 9.—Voucher to Abstract A.]

The United States to J. E. Labatt, Dr.

Place and date of purchase.		Dollars.	Cts.
San Antonio, Texas, November 30, 1881.	For 153,075 pounds corn @ $1.16 per bushel of 56 pounds.....	$3,170	84
	Delivered under his contract with the chief quartermaster Department of Texas, dated October 29, 1881. Appropriation: Regular supplies fiscal year 1881–1882.		

Under authority in letter from Headquarters Department of Texas, dated September 19, 1881, I certify that I have inspected and accepted the above amount of corn, and found it of good quality.

61 I certify that the above account is correct and just, and that the articles have been accounted for on my property return for the quarter ending on the 31st of December, 1881.

L. E. CAMPBELL,
Capt. and Asst. Quartermaster, U. S. Army.

Received at San Antonio, Texas, the 3 of December, 1881, of Capt. L. E. Campbell, asst. quartermaster, U. S. Army, the sum of three thousand one hundred and seventy (3,170) dollars and eighty-four (84) cents, in full of the above account.

(Signed in duplicate.) J. E. LABATT.

(Endorsed in the following words, to wit:) Form No. 9. Voucher No. 2, Abstract A. December, 1881. J. E. Labatt, dollars $3,170\frac{84}{100}$. Paid December, 3, 1881. Check No. 93, 1879, date Dec. 3rd, 1881, a mount $3,170.84. Depository, Asst. Treas'r N. Y. Regular supplies 1881–1882. To be made in duplicate, one copy to be retained by the officer, one to be forwarded to the Quartermaster-General with Abstract A.

The authority for making a purchase and a statement of the object and necessity for the same must accompany the voucher. If such authority has already been filed it should be referred to in all subsequent vouchers for purchases made under it.

If the purchase is made under a contract, the name of the contractor, date of contract, and its object should be given as per example: Under contract of John Smith, for forage, Nov. 17, 188–.

No reference should be made to any agreement not in writing and not transmitted to the Quartermaster-General's Office for file.

62 [FORM No. 9.—Voucher to Abstract A.]

The United States to J. E. Labatt, Dr.

Place and date of purchase.		Dollars.	Cts.
San Antonio, Texas, November 30th, 1881.	For 50,000 pounds corn @ $1.16 per bush. of 56 pounds	$1,035	71
	Delivered under his contract with the chief quartermaster Department of Texas, dated October 29th, 1881.		

Under authority in letter from headquarters department of Texas, dated September 19, 1881, I certify that I have inspected and accepted the above amount of corn and found it of good quality.

I certify that the above account is correct and just, and that the articles have been accounted for on my property return for the quarter ending on the 31st of December, 1881.

L. E. CAMPBELL,
Capt. and Asst. Quartermaster, U. S. Army.

Received at San Antonio, Texas, the 20 of June, 1882, of Maj. J. G. C. Lee, quartermaster, U. S. Army, the sum of one thousand and thirty-five (1,035) dollars and seventy-one (71) cents, in full of the above account.

(Signed in duplicate)

J. E. LABATT.

(Endorsed in the following words, to wit:) Form No. 9, Voucher No. 29, Abstract A, June, 1882. J. E. Labatt, dollars $1,035\frac{71}{100}$. Paid June 20, 1882. Check No. 62831; date, June 20, 1882; amount, $\$2,960\frac{71}{100}$. depository, New York. To be made in duplicate: One copy to be
63 retained by the officer, one to be forwarded to the Quartermaster-General with Abstract A.

The authority for making a purchase and a statement of the object and necessity for the same must accompany the voucher. If such authority has already been filed it should be referred to in all subsequent vouchers for purchases under it.

If the purchase is made under a contract, the name of the contractor, date of contract, and its object should be given, as per example: Under contract of John Smith, for forage, Nov. 17, 188–.

No reference should be made to any agreement not in writing and not transmitted to the Quartermaster-General's Office for file.

[FORM No. 9.—Voucher to Abstract A.]

The United States to J. E. Labatt, Dr.

Place and date of purchase.		Dollars.	Cts.
San Antonio, Texas, December 26th, 1881.	For 41,976 pounds corn, @ $1.16 per bush., at 56 pounds to the bushel. Delivered under his contract with the chief quartermaster, department of Texas, dated October 29th, 1881. Regular supplies, 1881–1882.	869	50

Under authority in letter from headq'rs department of Texas, dated September 19th, 1881, I certify that I have inspected and accept d the above amount of corn and found it of good quality.

I certify that the above account is correct and just, and that the
64 articles have been accounted for on my property return for the quarter ending on the 31st of December, 1881.

L. E. CAMPBELL,
Capt. and Asst. Quartermaster, U. S. A.

Received at San Antonio, Texas, the 29th of December, 1881, of Capt. L. E. Campbell, asst. quartermaster, U. S. Army, the sum of eight hundred and sixty-nine (869) dollars and fifty (50) cents, in full of the above account.

(Signed in duplicate)

J. E. LABATT.

(Endorsed in the following words, to wit): Form No. 9, voucher No. 83, Abstract A. December, 1881. J. E. Labatt, dollars $869\frac{50}{100}$. Paid December 29, 1881. Check No. 94356; date, Dec. 29th, 1881; amount, $869.54. Depository, asst. treasr., N. Y. Regular supplies, 1881–1882. To be made in duplicate: One copy to be retained by the officer, one to be forwarded to the Quartermaster-General with Abstract A.

The authority for making a purchase and a statement of the object and necessity for the same must accompany the voucher. If such authority has already been filed, it should be referred to in all subsequent vouchers for purchases made under it.

If the purchase is made under a contract, the name of the contractor, date of contract, and its object should be given, as per example: Under contract of John Smith, for forage, Nov. 17, 188–.

No reference should be made to any agreement not in writing and not transmitted to the Quartermaster-General's Office for file.

65 [FORM No. 9.—Voucher to Abstract A.]

The United States to J. E. Labatt, Dr.

Place and date of purchase.	Regular supplies, 1881–1882.	Dollars.	Cts.
San Antonio, Texas, February 27th, 1882.	For 109,148 pounds corn, @ $1.16 per bush. of 56 pounds to the bushel. Delivered under his contract with the chief quartermaster department of Texas, dated October 29th, 1881.	2,260	92

Under authority in letter from headqrs. dep't of Texas, dated September 19, 1881, I certify that I have inspected & accepted the above amount of corn and found it of good quality.

I certify that the above account is correct and just, and that the articles have been accounted for on my property return for the quarter ending on the 31st March, 1882.

L. E. CAMPBELL,
Capt. & Ass't Quartermaster, U. S. A.

Received at San Antonio, Texas, the 28th of February, 1882, of Captain L. E. Campbell, assistant quartermaster, U. S. A., U. S. Army, the sum of two thousand two hundred and sixty (2,260) dollars and ninety-two (92) cents in full of the above account.

(Signed in duplicate) J. E. LABATT.

(Endorsed in the following words, to-wit:) Form No. 9, voucher No. 51, Abstract A, February, 1882. J. E. Labbatt, dollars $2{,}260\frac{92}{100}$. Paid February 28, 1882. Check, No. 114167; date, Feb. 28, 1882. Amount, $2,260.92.

66 Depository ass't treas'r, N. Y. To be made in duplicate: One copy to be retained by the officer, one to be forwarded to the Quarmaster-General with Abstract A.

The authority for making a purchase and a statement of the object and necessity for the same must accompany the voucher. If such authority has already been filed it should be referred to in all subsequent vouchers for purchases made under it.

If the purchase is made under a contract the name of the contractor, date of contract, and its object should be given as per example: Under contract of John Smith, for forage, Nov. 17, 188–.

No reference should be made to any agreement not in writing and not transmitted to the Quartermaster-General's office for file.

[FORM No. 9.—Voucher to Abstract A.]

The United States to J. E. Labatt, Dr.

Place and date of purchase.	Regular supplies, 1881–1882.		
	For 82,966 pounds corn, @ $1.16 per bush. of 56 lbs. to the bushel. Delivered under his contract with the chief quartermaster, department of Texas, dated October 29th, 1881.		

Under authority in letter from headquarters department of Texas, dated September 19th, 1881, I certify that I have inspected & accepted the above amount of corn and found it of good quality.

67 I certify that the above account is correct and just, and that the articles have been accounted for on my property return for the quarter ending on the 31st of March, 1882.

L. E. CAMPBELL,
Capt. & Assistant Quartermaster, U. S. A.

Received at San Antonio, Texas, the 4th of March, 1882, of Capt. L. E. Campbell, assistant quartermaster, U. S. Army, the sum of one thousand seven hundred and eighteen (1,718) dollars and fifty-eight (58) cents, in full of the above account.

(Signed in duplicate.) J. E. LABATT.

(Endorsed in the following words, to wit:) Form No. 9. Regular supplies 1881–1882, voucher No. 11, abstract A, March, 1882, J. E. Labatt; dollars, $1,718.58; paid March 4th, 1882; check No. 114,175, date, March 4th, 1882; amount, $1,718.58; depository, Ass't Treas'r N. Y. To be made in duplicate: One copy to be retained by the officer, one to be forwarded to the Quartermaster-General with abstract A.

The authority for making a purchase and a statement of the object and necessity for the same must accompany the voucher. If such authority has already been filed, it should be referred to in all subsequent vouchers for purchases made under it.

If the purchase is made under a contract, the name of the contractor, date of contract, and its object should be given, as per example: Under contract of John Smith, for forage, Nov. 17, 1881.

No reference should be made to any agreement not in writing and not transmitted to the Quartermaster-General's office for file.

Filed January 12, 1884.

M. HOPKINS,
Clk,
By SAM HOPKINS,
D'y Clerk.

68 And the same being admitted in evidence by the court, and the plaintiff offering no other testimony, and the defendant offering no testimony whatever, and after argument of counsel on both sides, it is the opinion of the court that the plaintiff by her evidence presents no cause of action against the defendants, and that the defendants have judgment, and that the defendants go hence without day. The ruling of the court is based upon the following grounds: Under the contract a demand upon Phillips was a condition precedent, and until after demand he was not in default, and I do not think the transcript furnish any legal evidence of such demand having been made.

To which ruling of the court the plaintiff then and there in open court excepted, tenders this her bill of exceptions, and prays the signature and enrollment and filing, and in open court, the attorneys for the defendants being present, prayed for her writ of error to the Supreme Court of the United States, which is granted. In terms of the law, no bond being required.

In testimony whereof I do hereby affix my official signature this the 3rd day of September, A. D. 1885, the same being the day of the rendition of said judgment.

E. B. TURNER, [L. S.]
U. S. Dist. Judge, W. D. Texas.

(Endorsed in the following words, to wit:) No. 1921. The United States vs. Dennis Corwin, John Cardwell. Bill of Ex. No. 1. Filed Sept. 3rd, 1885. Sam Hopkins, clerk.

69 United States of America, to Dennis Corwin and John Cardwell, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the western district of Texas, 5th circuit, sitting at Austin, wherein the United States is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, the 8th day of September, in the year of our Lord one thousand eight hundred and eighty-five.

E. B. TURNER,
U. S. Judge.
SAM. HOPKINS,
Clerk U. S. Circ't Court.

Test, with seal of court, at Austin, this 8th day of September, A. D. 1885.
[SEAL.]

70 (Endorsed:) Original writ. In Supreme Court of the United States. The United States, plaintiff in error, vs. Dennis Corwin and John Cardwell, def'ts in error. Citation in error to John Cardwell

and Dennis Corwin. Issued 8th day of September, A. D. 1885. Sam. Hopkins, clerk. Received in office 5.15 p. m., Sept. 11, 1885. S. D. Jackman, U. S. M., by B. G. DuVal, d'y. And executed this writ at Austin, Texas, in my district, by delivering to the within-named defendants in error, Dennis Corwin and John Cardwell, each a true copy of this writ, this September 12, 1885. S. D. Jackman, U. S. marshal, W. D. T., by John H. Troyhuam, deputy.

71 In the United States cir for the 5th circuit and western district of Texas, holding sessions in the city of Austin.

THE UNITED STATES OF AMERICA, *vs.* DENNIS CORWIN AND JOHN CARDWELL. } No. 1921.

To the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America:

Now appears the United States of America, by her attorney, and most respectfully says, that the third day of August, A. D. 1885, the honorable United States circuit for the western district of Texas, in the above numbered and styled cause, did render its final judgment that the plaintiff take nothing by her suit, and farther that there is manifest error and wrong in judgment to her great damages, and farther she most humbly prays for her writ of error to our said honorable circuit court in this case, and that the aforesaid final judgment be reversed and set aside in all things, and that our Supreme Court render to plaintiff her judgment so wrongfully withheld &c., &c., as in justice &c., &c., and that def'ts have notice, &c., &c.

A. J. EVANS,
U. S. Att'y West. Dist.

(Endorsed in the following words, to wit:) No. 1921. The United States vs. Dennis Corwin and John Cardwell. Petition for writ of error. Filed Sept. 3rd, 1885. Sam Hopkins, clerk.

72 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable judges of the circuit court of the United States, 5th circuit, in and for the western district of Texas, holding sessions at Austin in said district, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said circuit court, before you, between the United States, who is plaintiff, and Dennis Corwin and John Cardwell, who are defendants, No. 1921 on the docket of said circuit court of the United States, sitting at Austin in said district, a manifest error hath happened, to the great damage of the said United States, who is plaintiff in error herein, as by her complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States,

together with this writ, so that you have the same at Washington
73 on the second Monday of October next, in said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court, the 8th day of September, in the year of our Lord one thousand eight hundred and eighty-five, and seal our circuit court, at Austin, in the one hundred and tenth year of the Independence of the United States.

[SEAL.] SAM. HOPKINS,
Clerk of the Circuit Court of the United States,
Western Dist. of Texas, at Austin.

Allowed by—
E. B. TURNER,
U. S. Judge.

(Endorsed:) In Supreme Court of the United States.
The United States, plaintiffs in error, vs. John Cardwell and Dennis Corwin, def'ts in error. Writ of error to Supreme Court of the United States. Issued 8th day of September, A. D. 1885. Sam. Hopkins, clerk.

74 In the honorable United States circuit court for 5th circuit & western district of Texas, sitting at Austin in said district, at its August term, 1885.

THE UNITED STATES
vs.
DENNIS CORWIN & JOHN CARDWELL. } No. 1921.

Now comes the plaintiff and assigns errors in the judgment rendered in the above cause in the court below.

1st. The court had no business opening the Treasury transcript, as there were no claim of credits.

2d. The court on its own motion supplied the defendants with their plea of plaintiff's failing to notify the contractor.

3rd. The Treasury transcript, the only evidence before the court, fully shows good cause of action in plaintiff.

A. J. EVANS,
U. S. Att'y.

(Endorsed in the following words, to wit:) 1921. United States vs. Dennis Corwin, John Cardwell. Assignment of errors. Filed Sept. 3rd, 1885. Sam. Hopkins, clerk.

75 I, Samuel Hopkins, clerk of the circuit court of the United States in and for the 5th circuit and western district of Texas, at Austin, certify that the foregoing seventy-four numbered pages in writing contains a full, true, and correct transcript of the record and all proceedings had in case No. 1921, United States vs. Edwin P. Phillips et al., as they appear of file and of record in this court.

In testimony whereof I have hereunto set my hand & seal of the circuit court, at Austin, this the 12th day of September, A. D. 1885.

[SEAL.] SAM. HOPKINS,
Clerk U. S. Circ't C't, Austin.

76 United States of America to Dennis Corwin and John Cardwell, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the western district of Texas, 5th circuit, sitting at Austin.

Wherein the United States is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 8th day of September, in the year of our Lord one thousand eight hundred and eighty-five.

[SEAL.]

E. B. TURNER,
U. S. Judge.
SAM. HOPKINS.
Clerk U. S. Circ't Court.

Test with seal of court at Austin, this 8th day of September, A. D. 1885.

77 (Indorsement:) Original writ in Supreme Court of the United States. The United States, pl'ff in error, vs. Dennis Corwin and John Cardwell, def'ts in error. Citation in error to John Cardwell & Dennis Corwin, issued 8th day of September, A. D. 1885. Sam. Hopkins, clerk. Received in office at 5.15 p. m., Sept. 11, 1885. S. D. Jackman, U. S. M., by B. G. Duval, d'y. And executed this writ at Austin, Texas, in my district, by delivering to the within-named defendants in error, Dennis Corwin and John Cardwell, each a true copy of this writ, this September 12, 1885. S. D. Jackman, U. S. marshal W. D. Texas, by John H. Traynham, deputy.

78 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable judges of the circuit court of the United States, 5th circuit, in and for the western district of Texas, holding sessions at Austin in said district, greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in said circuit court, before you, between The United States, who is plaintiff, and Dennis Corwin and John Cardwell, who are defendants, No. 1921 on the docket of said circuit court of the United States, sitting at Austin in said district, a manifest error hath happened, to the great damage of the said United States, who is plaintiff in error herein, as by her complaint appears:

We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the

second Monday of October next in said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court, the 8th day of September, in the year of our Lord one thousand eight hundred and eighty-five, and seal our said circuit court at Austin, in the one hundred and tenth year of the Independence of the United States.

[SEAL.]

SAM. HOPKINS,
Clerk of the Circuit Court of the United States,
West. Dist. of Texas at Austin.

Allowed by—
E. B. TURNER,
United States Judge.

79 (Indorsement:) In Supreme Court of the United States. The United States, pl'ff in error, vs. John Cardwell & Dennis Corwin, def'ts in error. Writ of error to Supreme Court of the United States. Issued 8th day of Sept., A. D. 1885. Sam. Hopkins, clerk.

(Indorsement on cover:) No. 395. The United States, plaintiff in error, vs. Dennis Corwin and John Cardwell. C. C. U. S., W. Texas. Filed October 14, 1885.

6992——4

In the Supreme Court of the United States.

OCTOBER TERM, 1888.

THE UNITED STATES, PLAINTIFF in error, *vs.* DENNIS CORWIN AND JOHN CARDWELL.	No. 123.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

BRIEF FOR THE UNITED STATES.

WM. A. MAURY,
Assistant Attorney-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1888.

THE UNITED STATES, PLAINTIFF IN error,
vs.
DENNIS CORWIN AND JOHN CARDwell.
} No. 123.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

BRIEF FOR THE UNITED STATES.

This is a suit against Dennis Corwin and John Cardwell as sureties in two bonds given by one Edwin P. Phillips, who, being out of the jurisdiction of the court, was not sued, to secure the faithful performance of two contracts dated 20th May, 1881, between Phillips and the United States.

By one of these contracts Phillips agreed to "furnish or cause to be supplied and delivered to the Quartermaster's Department, U. S. Army, at the military station of San Antonio, Tex." such quantity of good merchantable oats as might be required, not exceeding 1,000,000 pounds, "the said oats to be furnished and delivered as may be required for the wants of the said station between the 1st day of July, 1881, and the 30th day of June, 1882, in such quantities and at such times as the receiving officer may require" (Rec., p. 12).

By the other one of the contracts Phillips agreed *in precisely the same terms* to deliver at the same place 1,000,000 pounds of good merchantable corn, "the said corn to be furnished and delivered as may be required for the wants of the said station between the 1st day of July, 1881, and the 30th day of June, 1882, in such quantities and at such time as the receiving officer may require" (Rec., p. 16).

The bonds entered into by Phillips and his sureties, Corwin and Cardwell, to secure the due

performance of the above-mentioned contracts, were each subject to the following condition, to wit:

> Now, therefore, if the above bounden Ed. P. Phillips, his heirs, executors, and administrators, shall and will, in all respects, duly and fully observe and perform all and singular, the covenants, conditions, and agreements in and by the said contract agreed and covenanted by him to be observed and performed, and according to the true intent and meaning of the said contract, and as well during any period of extension of said contract that may be granted on the part of the United States as during the original term of the same, then the above obligation shall be void and of no effect; otherwise to remain in full force and virtue (Rec., pp. 11, 14).

The bond to secure performance of the contract to supply oats is in the penalty of $3,000, and the bond to secure performance of the contract to supply corn is in the penalty of $2,150.

Each of the contracts contained the following clause:

> That in case of failure of the said party of the second part to comply with the stipulations of this contract according to the true intent and meaning thereof, then the party of the first part shall have the power to supply the deficiency by purchase or otherwise, and have the contractor charged with the difference in the cost to the Government, subject to the approval of the department com'd'r.

The petition, proceeding to assign breaches of the conditions of the bonds, avers that, while the United States had performed all things necessary

to be done on its part under the contract, the other party, Phillips, had wholly failed and refused to observe his covenants; in consequence whereof the United States was compelled to purchase outside the contract 845,027 pounds of oats at $19,035.72, which exceeded by $6,835.88 what the same quantity would have cost under the contract, and was compelled to purchase outside the contract 477,165 pounds of corn at $9,829.84, which exceeded by $4,728.67 what the same quantity would have cost under the contract; thus ssubjecting the Government to an aggregate loss of $11,564.55, for which sum, or so much thereof as the petitioner may be entitled to recover from the sureties, judgment is asked (Rec., pp. 1–4).

The defendant Corwin demurred to the petition, and at the same time traversed its allegations (Rec., p. 7).

The defendant Cardwell, in like manner, demurred and traversed (Rec., p. 7).

On the 24th August, 1884, a formal stipulation was filed waiving a jury and submitting all

matters of law and fact to the court (Rec., p. 8).

On 25th August, 1884, the plaintiff amended the declaration by adding the averment that on 8th July, 1881, demand was made on Phillips, under the contract, to deliver 150,000 pounds of corn and the same quantity of oats (Rec., p. 9).

On the 3d September, 1885, the court, after overruling all objections of law raised by the defendants, and after hearing the evidence and arguments of counsel, adjudged "that the defendants are not liable to plaintiff" (Rec., p. 9).

To this judgment the plaintiff excepted (Rec., pp. 9–37).

After setting out all the evidence, which was wholly documentary, consisting of transcripts of various original papers deposited in the Treasury Department and relevant to the case, the bill of exceptions proceeds to make the following statement:

> And the same being admitted in evidence by the court, and the plaintiff offering no other testimony and the defendant offering no testimony whatever, and after argument of counsel

on both sides, it is the opinion of the court that the plaintiff by her evidence presents no cause of action against the defendants, and that the defendants have judgment, and that the defendants go hence without day. The ruling of the court is based upon the following grounds: Under the contract a demand upon Phillips was a condition precedent, and until after demand he was not in default, and I do not think the transcript furnishes any legal evidence of such demand having been made (Rec., p. 37).

Virtually, then, the case was before the court on a demurrer to the plaintiff's evidence.

ASSIGNMENT OF ERROR.

The court erred in not giving judgment for the amount of the penalty of each bond, the damage suffered by the violation of each contract being largely in excess of the penalty of the bond to secure performance of such contract.

ARGUMENT.

It is not pretended that the transcript is not authenticated in the way prescribed by section 882 Revised Statutes, because the bill of exceptions, in its opening sentence, refers to it as "the Treasury transcript *certified as the law requires.*"

Nor was it possible for the court to doubt as to the existence, in point of fact, of the contracts

and bonds described in the plaintiff's petition, for the transcript contains a copy of each.

The particulars in which the plaintiff's proof failed, in the view of the court below, were that there was no evidence that the plaintiff had made the demands for performance on the contractor required by the contracts.

In other words, as the contractor was only required by each contract to deliver the grain contracted for between the first of July, 1881, and the thirtieth of June, 1882, "*in such quantities and at such times as the receiving office may require*," it was necessary to prove a demand under each contract before the contractor could be put in default and a right of action against him and his sureties could accrue to the United States.

As it may be conceded that it lay upon the United States to show its demand of performance under each contract and the contractor's failure or refusal to perform, the question, and the only question, to be considered in the case is, whether the Government's evidence was competent to establish the demand and refusal.

It will be observed that the contract was to be performed at San Antonio, in the State and Military Department of Texas.

CHARACTER OF THE EVIDENCE.

What, then, is the character of the evidence that was offered in support of the Government's case?

We will first take the evidence under the contract to furnish oats.

On the 2d August, 1881, the quartermaster in charge of the depot at San Antonio writes to the chief quartermaster of the department for authority to purchase 40,000 pounds of oats in open market, "the contractor, Mr. E. P. Phillips, having failed to make deliveries under his contract."

The chief quartermaster refers this letter to the adjutant-general of the department, recommending its approval, "in accordance with article 1 of the contract." He further says:

> Mr. Phillips, after having had due notice by requisition from the depot quartermaster to furnish certain quantities of grain, has so far failed to make any delivery, and the amount of grain

for which authority is here requested to purchase in open market is absolutely needed for issue to the public and private animals pertaining to this station and the San Antonio depot, and will last about ten days.

The other indorsements show that the request was approved and the grain bought from one J. E. Muegg (R., pp. 17–19).

On the 2d September, 1881, the depot quartermaster at San Antonio wrote to the chief quartermaster of the Department of Texas informing him that Phillips had "failed to make deliveries under his contract," and asking authority to purchase in open market 60,000 pounds of oats and 40,000 pounds of corn (p. 21).

Under this request 60,000 pounds *of oats only* were purchased (p. 22).

On 4th October, 1881, a similar authority was asked and granted to purchase 100,000 pounds *of oats*, Phillips "having failed to make deliveries under his contract," and the purchase was made.

Then follow vouchers for 80,000 pounds of oats bought outside the contract on 31st October, 1881 (p. 24), for 130,188 pounds of oats

bought on 21st November, 1881 (p. 25), for 86,232 pounds of oats bought on 5th January, 1882, for 34,581 pounds of oats bought on 9th February, 1882, for 53,873 pounds of oats bought on 13th March, 1882, for 39,901 pounds of oats bought on 14th March, 1882, for 48,078 pounds of oats bought on 31st March, 1882 (p. 29), for 16,083 pounds of oats bought on 13th April, 1882, and for 84,091 pounds of oats bought on 17th January, 1882 (p. 31).

Turning now to the evidence touching the contract to supply corn, we find vouchers only for corn purchased outside the contract 12th September, 1881 (p. 32), 30th November, 1881 (p. 33), 26th December, 1881 (p. 34), 27th February, 1882 (p. 35), and a voucher for corn purchased, probably in March, 1882 (p. 36). We find no correspondence, nor any other form of documentary evidence tending to show that the demand for performance required by the contract to supply corn had been made by the Government.

VALUE OF THE EVIDENCE.

The idea upon which the counsel for the Government proceeded was that the official letters of the depot quartermaster at San Antonio and the indorsements of the chief quartermaster and adjutant-general of the Department of Texas were competent evidence of the matters therein stated.

It is conceived that this idea was a proper one.

It would be extremely dangerous if the large transactions of the Government rested in any degree on the precarious support of human memory.

It is the written contemporaneous memorials left by its officers in all its departments that constitute the memory of the Government.

It is a public necessity that the Government should be able to use as evidence these memorials to prove the matters which they recite.

In addition to the guaranty of accuracy afforded by the fact that these memorials are made in the usual course of official duty by officers

having original knowledge of the matters to which they relate, they derive no small corroboration from the circumstance that they are generally made by sworn officers.

Of course, then, the remark of this court touching private entries made in the usual course of business, namely, that "*safer sanctions rarely surround the testimony of a witness examined under oath*" (*Fennerstein's Champagne*, 3 Wall., 149), applies with still greater force to entries made by public officers.

In Carpenter *v.* Bailey (56 N. H., 283), which was an action for a libel injuriously affecting the plaintiff as a paymaster in the Navy and causing his being relieved from duty at Portsmouth, N. H., a letter from admiral Porter was admitted to show the ground on which the action of the Navy Department was based.

In Fitchburg *v.* Lunenburg (102 Mass., 358), which was a settlement case, it was held that a soldier's discharge was conclusive evidence of the cause of his leaving the service.

In Whiton *v.* Albany and Narragansett Insurance Companies (109 Mass., 24) official letters and other public documentary matter were held admissible to show that the island of Navassa was a guano island within the meaning of the clause in the policy sued on prohibiting the vessel insured "from all guano islands except the Chinchas or Peruvians."

In Radcliff *v.* United Insurance Company (7 Johns, 50) Kent, C. J., said, speaking for the court, that a letter of Mr. Canning to Mr. Pinkney should have been admitted as "decisive evidence of the intention of the English Government to include St. Lucas in the blockade of Cadiz and to carry the blockade, at the entrances of those ports, into 'the most rigorous' effect."

This principle of evidence has been frequently recognized in the Court of Claims (Gordon *v.* U. S., C. Cls., 292; Block *v.* U. S., 7 *ibid.*, 406; McCann *v.* U. S., 18 *ibid.*, 445; Brannen *v.* U. S., 20 *ibid.*, 219).

The general principle as to the admissibility of public records and documents is undoubted (Tay-

lor's Ev., §§ 1571–1585; 1 Greenl. Ev., §§ 470–498), but the adjudged cases show that the rule has a larger scope than might be inferred from the discussions in the text-books.

When, therefore, the chief quartermaster of the Department of Texas states in an official indorsement that the contractor had made default under his contract to furnish oats by failing to respect requisitions and demands duly made, such statements must be allowed as evidence of demand and refusal under the contract.

It is unnecessary to inquire whether the same evidence of demand and refusal exists as to the other and subsequent purchases of oats outside the contract, for the one demand for performance under the contract and the one refusal to perform are enough to entitle the Government to treat the contractor as having committed a breach of the contract in every respect and particular. The contractor having once refused to perform, the Government was under no duty to make further demand on him or to accept afterwards a partial performance of the contract, which

was none the less entire because the grain to be supplied was not to be delivered all at once. Manifestly, the contractor, after this default, could not by a subsequent tender of performance have entitled himself to sue on the contract. If this is so, it shows that the United States has the right to sue for full damages. This would seem to follow from the careful and learned judgment of this court in Norrington *v.* Wright (115 U. S., 188–211), where the cases of Hoare *v.* Rennie (5 H. & N., 19) and Coddington *v.* Paleologo (L. R., 2 Ex., 193) are approved. Furthermore, the law laid down in these cases is to be taken in this case in connection with the 7th article of the contract above quoted.

It does, moreover, appear, in several instances of purchases of oats outside the contract, by letters of the depot quartermaster, that Phillips, the contractor, had "*failed to make deliveries under his contract,*" which may, reasonably, be treated as equivalent to a statement that such failure was after requisition made, otherwise it could not have been a failure "*under the contract.*"

As to the bond, then, to secure performance of the contract to supply oats, the action would seem clearly maintainable, a breach of the condition of the obligation having been clearly established.

As to the contract to supply corn, it does not appear that the record contains competent evidence of a demand and refusal of performance.

It is proper to say that the papers, of which copies are sent from the Treasury, *appear themselves to be copies*, but we maintain that copies of papers in one Department of the Government sent to another Department for use therein stand on the same footing as the original papers. Surely, if such copies are good enough as a basis for the settlement of accounts in the Treasury, they ought to be good enough for the purposes of evidence.

It is respectfully submitted that the judgment should be reversed.

WM. A. MAURY,
Assistant-Attorney General.